THE NATIONAL ARCHIVES LITTERA SCRIPTA MANET

FEDERAL REGISTER

OF THE UNITED STATES 1934

VOLUME 5 NUMBER 123

Washington, Tuesday, June 25, 1940

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER I — AGRICULTURAL MARKETING SERVICE

PART 29—THE TOBACCO INSPECTION ACT

ORDER OF DESIGNATION OF TOBACCO MARKETS, VALDOSTA, GEORGIA, AND LIVE OAK, FLORIDA

Whereas, The Act of Congress approved August 23, 1935 (49 Stat., 731; 7 U.S.C., Sup. I, Chap. 21A) entitled "The Tobacco Inspection Act" contains the following provisions:

SEC. 2 That transactions in tobacco involving the sales thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

SEC. 25 That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

Whereas, pursuant to said Act referendums have been held among the growers of flue-cured tobacco who sold tobacco at auction on the markets of Valdosta, Georgia, and Live Oak, Florida, during the last marketing season, in which referendums said growers were given an opportunity to vote for or against the designation as provided in Section 5 of said Act; and

Whereas, more than two-thirds of the growers voting in said referendums and who sold tobacco at auction on said markets during the last marketing season voted in favor of said designation.

§ 29.301 (o) *Designation of tobacco markets*

Now, therefore, by virtue of the authority conferred upon me by section 5 of The Tobacco Inspection Act and the affirmative results of the referendums conducted thereunder, the flue-cured tobacco markets of Valdosta, Georgia, and Live Oak, Florida, are designated

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following legal holidays by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500), under regulations prescribed by the Administrative Committee, approved by the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.25 per month or $12.50 per year; single copies 10 cents each; payable in advance. Remit money order payable to the Superintendent of Documents directly to the Government Printing Office, Washington, D. C.

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as markets where tobacco bought and sold thereon at auction, or the products manufactured therefrom, moves in commerce.

It is hereby ordered, That, effective 30 days from this date no tobacco shall be offered for sale at auction on the above-named markets until it shall have been inspected and certified by an authorized representative of the United States Department of Agriculture according to standards established under the Act: *Provided, however,* That the requirement of inspection and certification may be suspended at such times as it is found impracticable to provide inspection or when the quantity of tobacco available for inspection is insufficient to justify the cost of such service. No fee or charge shall be imposed or collected for the inspection and certification of tobacco sold or offered for sale at auction on the markets designated herein (49 Stat., 731; 7 U.S.C., Sup. I, Chap. 21A)

Done at Washington, D. C., this 21st day of June 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] GROVER B. HILL,
Acting Secretary of Agriculture.

[F. R. Doc. 40-2554; Filed, June 22, 1940; 9:18 a. m.]

CHAPTER III—BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[B.E.P.Q. 509]

ORDER MODIFYING THE JAPANESE BEETLE QUARANTINE REGULATIONS AS TO SHIPMENTS OF FRUITS AND VEGETABLES FROM CERTAIN AREAS IN VIRGINIA

Pursuant to the authority conferred upon the Chief of the Bureau of Entomology and Plant Quarantine by the second proviso of paragraph (1) of subsection (a) of § 301.48-5, Chapter III, Title 7, Code of Federal Regulations [regulation 5 of the rules and regulations (17th revision) supplemental to Notice of Quarantine No. 48 on account of the Japanese beetle, as amended], as amended by the order of the Secretary of Agriculture dated May 22, 1940 (5 F.R. 1847 *et seq.*), subdivision (a) of said paragraph is hereby amended to read as follows:

(a) No restrictions are placed on the interstate movement of fruits and vegetables between October 16 and June 14, inclusive, except that in the case of movement interstate from the following areas, the exemption applies only during the period from October 16 to May 31, inclusive:

Virginia.—The counties of Accomac and Northampton.

The infestation in the remainder of the area formerly designated in subdivision (a) is of such a nature that it is considered to be of no hazard in the spread of Japanese beetles through shipments of fruits and vegetables. Therefore, it is considered advisable to reduce the area specified in the subdivision.

Done at Washington, D. C., this 20th day of June 1940.

AVERY S. HOYT,
Acting Chief.

[F. R. Doc. 40-2555; Filed, June 22, 1940; 9:18 a. m.]

CHAPTER VIII—SUGAR DIVISION OF THE AGRICULTURAL ADJUSTMENT ADMINISTRATION

PART 802—SUGAR DETERMINATIONS

DETERMINATION OF SUGAR COMMERCIALLY RECOVERABLE FROM SUGAR BEETS

Pursuant to the provisions of section 302 (a) of the Sugar Act of 1937, I, H. A. Wallace, Secretary of Agriculture, do hereby make the following determination:

§ 802.11 *Determination of sugar commercially recoverable from sugar beets.* The amount of sugar, raw value, commercially recoverable from sugar beets marketed under that type of agreement com-

monly known as an "individual test contract" shall be deemed to be 95.5 per centum of the total sugar in the sugar beets, net weight, at the time of delivery to a processor; and the amount of sugar, raw value, commercially recoverable from sugar beets marketed under any other type of agreement shall be deemed to be 97.3 per centum of an amount of sugar calculated by applying to the net weight of the sugar beets, at the time of delivery to a processor, the average percentage of sugar content in the cossettes of all of the sugar beets included in a common marketing agreement: *Provided, however,* That in all cases the tests used to determine the sugar content are those tests customarily used for such purpose by sugar beet processors.

This determination supersedes the determination entitled "Determination of Sugar Commercially Recoverable from Sugar Beets," issued March 28, 1938.[1] (Sec. 302, 50 Stat. 910; 7 U.S.C., Supp. V, 1132)

Done at Washington, D. C., this 21st day of June, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 40-2553; Filed, June 22, 1940; 9:18 a. m.]

CHAPTER IX—DIVISION OF MARKETING AND MARKETING AGREEMENTS

[Order No. 41, as amended]

PART 941—ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA*

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941.0 Findings.
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941.12 Effective time, suspension, or termination of order.

Whereas pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), the Secretary of Agriculture of the United States tentatively approved, on August 18, 1939, a marketing agreement and issued, effective September 1, 1939, an order, both of which regulate the handling of milk in the Chicago, Illinois, marketing area; and

Whereas, the Secretary, having reason to believe that amendments to said tentatively approved marketing agreement and to said order would tend to effectuate the declared policy of said act, gave, on the 14th day of March 1940, notice of a public hearing[1] which was held at Chicago, Illinois, on March 20, 21, 22, and 23, 1940, at which times and place all interested parties were afforded an opportunity to be heard on certain proposed amended provisions of the tentatively approved marketing agreement and of the order; and

Whereas, after such hearing, handlers of more than fifty percent of the volume of milk covered by this order, as amended, which is marketed within the Chicago, Illinois, marketing area, refused or failed to sign a tentatively approved marketing agreement, as amended, relating to the handling of milk in such marketing area; and

Whereas the requirements of section 8e (9) of said act have been complied with; and

Whereas, the Secretary finds, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to findings made upon the evidence introduced at the original hearing on said order and being in addition to the other findings and determinations made prior to or at the time of the original issuance of said order (which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

§ 941.0 *Findings.* 1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8e of said act, are not reasonable in view of the price of feeds, the available supplies of feed, and other economic conditions which affect market supply of and demand for such milk, and that the minimum prices set forth in this order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the provisions of the order, as amended, requiring handlers to pay producers, through the producer-settlement fund, the difference between the value of milk or cream, purchased or received from sources other than producers or other handlers, at the Class IV price and the value according to its actual utilization by the handler, are incidental to and not inconsistent with the other provisions of the order, as amended, and are necessary to effectuate such other provisions;

3. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers defined in a marketing agreement, as amended, upon which a hearing has been held; and

4. That the issuance of this order, as amended, and all of its terms and conditions, will tend to effectuate the declared policy of the act:

Now, therefore, H. A. Wallace, Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby orders that such handling of milk in the Chicago, Illinois, marketing area, as is in the current of interstate commerce, or as directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in compliance with the following terms and conditions:

§ 941.1 *Definitions*—(a) *Terms.* The following terms as used herein shall have the following meanings:

(1) The term "Chicago, Illinois, marketing area," hereinafter called the "marketing area," means the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park, all in the State of Illinois.

(2) The term "person means any individual, partnership, corporation, association, or any other business unit.

(3) The term "approved plant" means any plant which is approved by any health authority for the receiving of milk which may be disposed of as Class I milk, as defined in § 941.4, in the marketing area.

(4) The term "producer" means any person who produces milk which is received by a handler at an approved plant, or who produces milk which, upon proof furnished satisfactory to the market administrator, is qualified to be received at such approved plant.

(5) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, other handlers, persons producing milk not qualified to be received at an approved plant, or persons operating an unapproved plant, all, or a portion, of which milk is disposed of as Class I milk or Class II milk in the marketing area; and who, on his own behalf or on behalf of others, engages in such handling of milk, or cream therefrom, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include any person who receives milk from producers at an approved plant from which no milk or cream is disposed of in the marketing area, and any cooperative association or handler with respect to the milk of any producer which it causes to be delivered to a plant from which no milk or cream is disposed of in the marketing area, for the account of such cooperative association or handler.

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[1] 3 F.R. 656.

*§§ 941.0 to 941.12, inclusive, issued under the authority contained in 48 Stat. 31 (1933), 7 U.S.C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U.S.C. 601 et seq. (Supp. IV, 1938).

[1] 5 F.R. 1068.

(6) The term "market administrator" means the agency which is described in § 941.2 for the administration hereof.

(7) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

(8) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

(9) The term "frozen cream" means milk the butterfat from which is held in an approved cold storage warehouse at an average temperature below zero degrees Fahrenheit for 7 consecutive days, as shown by charts of a recording thermometer.

(10) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(11) The term "Secretary" means the Secretary of Agriculture of the United States.

§ 941.2 *Market administrator*—(a) *Selection, removal, and bond.* The agency for the administration hereof shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) *Compensation.* The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

(c) *Powers.* The market administrator shall have the power: (1) to administer the terms and provisions hereof, and (2) report to the Secretary complaints of violations of this order.

(d) *Duties.* The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to § 941.3, or made payments required by § 941.8;

(6) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation hereof as do not reveal confidential information;

(7) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and

(8) Pay, out of the funds received pursuant to § 941.9, the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) *Announcement of prices.* The market administrator shall compute and publicly announce prices as follows:

(1) Not later than the 5th day after the end of each delivery period, the prices for all classes of milk pursuant to § 941.5 (a), the differentials pursuant to § 941.5 (b) and the Class I prices applicable pursuant to § 941.5 (d).

(2) Not later than the 14th day after the end of each delivery period, the uniform price computed pursuant to § 941.7 (b).

§ 941.3 *Reports of handlers*—(a) *Submission of reports.* Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 7th day after the end of each delivery period, each handler who purchases or receives milk from associations of producers and other handlers, with respect to all milk purchased or received from such sources, shall submit to the market administrator and to the association of producers or handlers from whom the milk was purchased, a record of the utilization of such milk, classified pursuant to § 941.4.

(2) On or before the 10th day after the end of each delivery period, the quantity and the butterfat test of (a) the receipts of milk at each plant from producers, (b) the receipts of milk at each plant from other handlers, (c) the receipts of milk or cream from sources other than producers and handlers, if any, (d) the receipts at each plant of the milk produced by him, if any, and (e) the utilization of all receipts of milk for the delivery period.

(3) On or before the 10th day after the end of each delivery period, the information required with respect to producer additions, producer withdrawals, and changes in names of farm operators.

(4) On or before the 10th day after the end of each delivery period, the sale or disposition of milk outside the marketing area, pursuant to § 941.5 (d) as follows: (a) the amount and the utilization of such milk, (b) the butterfat test thereof, (c) the point of use, (d) the plant from which such milk is shipped, and (e) such other information with respect thereto as the market administrator may require.

(5) On or before the 25th day after the end of each delivery period, his producer pay roll, which shall show for each producer (a) the total delivery of milk with the average butterfat test thereof, (b) the net amount of payment to such producer made pursuant to § 941.8, (c) any deductions and charges made by the handler, and (d) such other information with respect thereto as the market administrator may require.

(b) *Verification of reports and payments.* The market administrator shall verify all reports and payments of each handler by audit of such handler's records, and of the records of any other handler or person upon whose disposition of milk such handler claims classification. Each handler shall keep adequate records of receipts and utilization of milk and shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to:

(1) Verify the receipts and disposition of all milk required to be reported pursuant to this section, and, in case of errors or omissions, ascertain the correct figures;

(2) Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends; and

(3) Verify the payments to producers prescribed in § 941.8.

§ 941.4 *Classification of milk*—(a) *Basis of classification.* All milk purchased or received by a handler from producers, associations of producers, and other handlers, including milk produced by him, if any, and including milk or cream purchased or received from sources other than from producers and handlers, if any, shall be reported by the handler in the classes set forth in paragraph (b) of this section: *Provided,* That if milk is moved from the plant where first received from producers to the plant of a second handler who has facilities for manufacturing milk products, such milk shall be classified as Class I milk, if moved from the second handler's plant in the form of milk to the plant of another handler, or nonhandler, who distributes fluid milk, and such milk shall be classified as Class II milk if moved from the second handler's plant in the form of cream to the plant of another handler, or nonhandler, who distributes fluid milk. If such milk is moved from the second handler's plant in the form of milk or cream to the plant of another handler, or nonhandler, who does not distribute fluid milk, such milk or cream shall be reported by such second handler, according to its utilization by the receiving handler or nonhandler, subject to verification by the market administrator: *Provided further,* That if milk is

moved from the plant where first received from producers to the plant of a second handler who does not have facilities for manufacturing milk products, and if such milk is moved from the second handler's plant in the form of milk or cream to the plant of a nonhandler, such milk or cream shall be reported by the second handler according to its utilization by the nonhandler, subject to verification by the market administrator. If such milk is moved to a third handler's plant, such milk shall be classified as Class I milk if moved from the third handler's plant in the form of milk to the plant of another handler, or nonhandler, who distributes fluid milk; and such milk shall be classified as Class II milk if moved from the third handler's plant in the form of cream to the plant of another handler, or nonhandler, who distributes fluid milk. If such milk is moved from the third handler's plant, in the form of milk or cream to the plant of another handler, or nonhandler, who does not distribute fluid milk, such milk or cream shall be reported by such third handler according to its utilization by the receiving handler or nonhandler, subject to verification by the market administrator.

(b) *Classes of utilization.* Subject to the conditions set forth in paragraph (a) of this section, the classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of fluid milk, except such milk as is used for purposes for which no approval by health authorities in the marketing area is necessary, and all milk not accounted for as Class II milk, Class III milk, or Class IV milk.

(2) Class II milk shall be all milk, except skim milk, disposed of in the form of flavored milk and flavored milk drinks, and all milk, the butterfat from which is disposed of in the form of cream, sweet or sour, cottage cheese, buttermilk, frozen cream, ice cream, and ice cream mix.

(3) Class III milk shall be all milk the butterfat from which is used to produce a milk product other than one of those specified in Class II and Class IV, and all milk disposed of for those purposes for which no approval by health authorities in the marketing area is necessary.

(4) Class IV milk shall be all milk the butterfat from which is used to produce butter and cheese, except cottage cheese, and all milk accounted for as actual plant shrinkage: *Provided,* That such plant shrinkage shall not exceed 2 percent of the total receipts of milk from producers. Any handler whose report claimed the original classification of milk in this class shall be liable under the provisions of § 941.8 (g) for the difference between the Class IV and Class II prices for the delivery period in which the Class IV classification was claimed on any such milk, if the butterfat used in the production of butter is subsequently used in the production of ice cream or ice cream mix.

(c) *Responsibility of handlers in establishing the classification of milk.* In establishing the classification of milk as required in paragraph (b) of this section, the responsibilities of handlers in establishing the classification of milk received by them shall be as follows:

(1) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove to the market administrator that such milk should not be classified as Class I milk.

(2) With respect to milk, or skimmed milk, disposed of to another handler, the burden rests upon the handler who purchased the milk from producers to account for the milk, or skimmed milk, and to prove to the market administrator that such milk, or skimmed milk, should not be classified as Class I milk: *Provided,* That if verification by the market administrator discloses a higher utilization than that reported pursuant to § 941.3 (a) (1) for milk purchased by a handler from a cooperative association, the market administrator shall notify the purchasing handler and such handler shall pay to such cooperative association, within 5 days after notification by the market administrator, the difference in value of such milk as verified by the market administrator and as reported by such handler pursuant to § 941.3 (a) (1).

(d) *Computation of milk in each class.* For each delivery period, each handler shall compute, in the manner and on forms prescribed by the market administrator, the amount of milk in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk (a) received from producers, (b) produced by him, if any, (c) received from other handlers, if any, (d) received from other sources, if any, and (e) add together the resulting amounts.

(2) Determine the total pounds of butterfat received as follows: (a) multiply the weight of the milk received from producers by its average butterfat test, (b) multiply the weight of the milk produced by him, if any, by its average butterfat test, (c) multiply the weight of the milk received from other handlers, if any, by its average butterfat test, (d) multiply the weight of the milk received from other sources, if any, by its average butterfat test, and (e) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (a) convert to quarts the quantity of milk disposed of in the form of milk, except such milk as is used for purposes for which no approval by health authorities in the marketing area is necessary, and multiply by 2.15, (b) multiply the result by the average butterfat test of such milk, and (c) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk, Class III milk, and Class IV milk, computed pursuant to subparagraphs (4) (b), (5) (b), and (6) (c) of this paragraph, is less than the total pounds of butterfat received, computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 3.5 percent and added to the quantity of milk determined pursuant to (a) of this subparagraph.

(4) Determine the total pounds of milk in Class II as follows: (a) multiply the actual weight of each of the several products of Class II milk by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(5) Determine the total pounds of milk in Class III as follows: (a) multiply the actual weight of each of the several products of Class III milk, including all milk disposed of for those purposes for which no approval by health authorities in the marketing area is necessary, by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(6) Determine the total pounds of milk in Class IV as follows: (a) multiply the actual weight of each of the several products of Class IV milk by its average butterfat test, (b) add together the resulting amounts, (c) subtract the total pounds of butterfat in Class I milk, Class II milk, and Class III milk, computed pursuant to subparagraphs (3) (b), (4) (b), and (5) (b) of this paragraph, and the total pounds of butterfat computed pursuant to (b) of this subparagraph, from the total pounds of butterfat computed pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2 percent of the total receipts of butterfat from producers by the handler) and shall be added to the result obtained in (b) of this subparagraph, and (d) divide the result obtained in (c) of this subparagraph by 3.5 percent.

(7) Determine the classification of milk received from producers as follows:

(i) Subtract pro rata out of each class the quantity of milk received from the handler's own farm.

(ii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from other handlers and used in such class.

(iii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from sources other than producers and handlers and used in such class.

(iv) Except as set forth in paragraph (e) of this section, the result shall be

known as the "net pooled milk" in each class.

(e) *Reconciliation of utilization of milk by classes with receipts of milk from producers.* (1) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is less than the receipts of milk from producers, the market administrator shall increase the total pounds of milk in Class IV for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is greater than the receipts of milk from producers, the market administrator shall decrease the total pounds of milk in Class IV for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

§ 941.5 *Minimum prices*—(a) *Class prices.* (1) Except as set forth in paragraph (d) of this section and subject to the differentials set forth in paragraphs (b) and (c) of this section, each handler shall pay, at the time and in the manner set forth in § 941.8, for milk purchased or received by such handler at any plant located not more than 70 miles by rail or highway, whichever is the shortest, from the City Hall in Chicago, not less than the prices set forth in this paragraph. Any handler who purchases or receives, during any delivery period, milk from a cooperative association which is also a handler shall, on or before the 15th day after the end of the delivery period, pay such cooperative association in full for such milk at not less than the minimum class prices, with appropriate differentials, applicable pursuant to this section.

(2) Class I milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 70 cents per hundredweight for the months of July, August, September, October, and November; 55 cents per hundredweight for the months of December, January, February, March, and April; and 45 cents per hundredweight for the months of May and June: *Provided,* That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $1.395 per hundredweight during delivery periods prior to July 1, 1940, and thereafter $1.63 per hundredweight.

(3) Class II milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 32 cents per hundredweight for the months of July, August, September, October, and November; 25 cents per hundredweight for the months of December, January, February, March, and April; and 20 cents per hundredweight for the months of May and June.

(4) Class III milk—The price per hundredweight for milk containing 3.5 percent butterfat during each delivery period shall be the average, computed by the market administrator, of prices, as reported to the United States Department of Agriculture, paid during such delivery period to farmers at each of the evaporated milk plants where milk is purchased for evaporating purposes at places listed in this subparagraph and for which prices are reported, but in no event shall such price be less than the price computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto.

Location of evaporated milk plants. Mt. Pleasant, Mich.; Sparta, Mich.; Hudson, Mich.; Wayland, Mich.; Coopersville, Mich.; Greenville, Wis.; Black Creek, Wis.; Orfordville, Wis.; Chilton, Wis.; Berlin, Wis.; Richland Center, Wis.; Oconomowoc, Wis.; Jefferson, Wis.; New Glarus, Wis.; Belleville, Wis.; New London, Wis.; Manitowoc, Wis.; West Bend, Wis.

(5) Class IV milk—Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 20 percent.

(6) In the event the marketing agreement for evaporated milk, issued by the Secretary on May 31, 1935, is suspended or terminated, the formula price to be used in determining the price for Class I milk, Class II milk, and Class III milk, in lieu of the formula set forth in section 1 of article VI of the said marketing agreement, shall be calculated by the market administrator as follows: multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 30 percent.

(b) *Butterfat differential to handlers.* If any handler has purchased or received milk from producers containing more or less than 3.5 percent butterfat, such handler shall add or deduct, per hundredweight of milk, for each one-tenth of 1 percent butterfat above or below 3.5 percent, an amount equal to the Class IV price computed pursuant to paragraph (a) of this section, divided by 35.

(c) *Location adjustments to handlers.* (1) With respect to milk purchased or received from producers at a plant located more than 70 miles by rail or highway, whichever is the shorter, from the City Hall in Chicago, which is classified as Class I milk or Class II milk, there shall be deducted 2 cents per hundredweight and ¼ cent per hundredweight, respectively, for each additional 15 miles or part thereof that such plant is located in excess of 70 miles from the City Hall in Chicago: *Provided,* That if any handler can prove to the market administrator that the l. c. l. freight rate, approved by the Interstate Commerce Commission, or the State authorities having the power to fix intrastate rail rates, for the movement of cream in 40-quart cans from the shipping point for the plant where such milk is received from producers to the marketing area, is greater than ¼ cent per hundredweight of milk, such actual freight rate shall be allowed such handler on Class II milk, but in no case shall such rate exceed ½ cent per hundredweight of milk. There shall be no location adjustment to handlers with respect to Class III milk or Class IV milk.

(2) For purposes of this paragraph, Class I milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area from which whole milk is shipped to the marketing area: *Provided,* That when actual shipments of milk to the marketing area by any handler are shown to be in excess of such handler's Class I milk, the location adjustments on Class I milk as provided in this section shall be applied to such milk, up to and including 105 percent of such handler's Class I milk. Class II milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area, after accounting for Class I milk, from which whole milk or cream is shipped to the marketing area.

(d) *Sales outside the marketing area.* The price to be paid by a handler for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be the price, as ascertained by the market administrator, which is being paid in the market where such milk is disposed of, for milk of equivalent use: *Provided,* That in the event such Class I milk is disposed of outside the 70-mile zone, such price as ascertained by the market administrator shall be adjusted by an amount equal to the carload freight rate approved by the Interstate Commerce Commission for the movement of milk in 40-quart cans from the shipping point for the plant where such milk is received from producers to the railroad delivery point serving the market where such milk is utilized as Class I milk.

§ 941.6 *Application of provisions*—(a) *Handlers who are also producers.* (1) No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers or an association of producers, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(2) The market administrator, in computing the value of milk for any handler pursuant to § 941.7, shall consider as Class IV milk any milk or cream received in bulk by such handler from a handler who distributes a part of his own production. If the receiving handler disposes of such milk or cream for other than Class IV purposes, such handler shall pay to producers, through the producer-settlement fund, the difference between (a) the value of such milk or cream at the Class IV price and (b) the value according to its actual utilization by the handler.

(b) *Payment for milk received from sources other than from producers or other handlers.* If any handler has purchased or received milk or cream from sources other than producers or other handlers, the market administrator, in computing the value of milk for such handler pursuant to § 941.7, shall consider such milk or cream as Class IV milk. If the receiving handler uses such milk or cream for other than Class IV purposes, such handler shall pay to producers, through the producer-settlement fund, the difference between (a) the value of such milk or cream at the Class IV price and (b) the value according to its actual utilization by the handler. This provision shall not apply to a handler who purchases or receives milk or cream from sources other than producers or handlers, if such handler can prove to the market administrator that such milk or cream was used for purposes which did not violate any regulations issued by the various health authorities in the marketing area.

(c) *Payment for milk shown as inventories of frozen cream held on effective date of this amended order.* If any handler has purchased or received milk from producers, or associations of producers, prior to the effective date of this amended order, the butterfat from which is on hand, on the effective date of this amended order, at a plant in the form of frozen cream, or cream which is subsequently so handled as to be classified as frozen cream, and such butterfat is finally disposed of in the manufacture of a product classified as Class II milk, such handler shall pay to producers, through the producer-settlement fund, the difference between the Class III price in effect for the delivery period during which the milk was received from producers and the price computed as follows: Add 20 cents to the price computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk, issued by the Secretary on May 31, 1935, for the delivery period during which the milk was received from producers. The market administrator or his representative shall at all times have access to the necessary records to determine the physical presence of the cream and the temperature of the room where stored.

§ 941.7 *Determination of uniform price*—(a) *Net pool obligation of handlers.* Subject to the provisions of § 941.6, the net pool obligation of each handler for milk received from producers during each delivery period shall be a sum of money computed for such delivery period as follows:

(1) Multiply the "net pooled milk" in each class, computed pursuant to § 941.4, by the class price, with appropriate differentials applicable pursuant to § 941.5 (b), (c), and (d), and add together the resulting values;

(2) Deduct, if the average butterfat content of all milk received from producers is in excess of 3.5 percent, and add, if the average butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to § 941.8 (c).

(b) *Computation of the uniform price.* The market administrator shall compute the uniform price per hundredweight of milk for each delivery period in the following manner:

(1) Combine into one total the net pool obligations of all handlers, computed pursuant to paragraph (a) of this section, who made the reports pursuant to § 941.3 (a) (2) for such delivery period;

(2) Add the amount of the location differentials applicable pursuant to § 941.8 (b);

(3) Add the amount of cash balance in the producer-settlement fund;

(4) Divide the result by the total quantity of net pooled milk of all handlers whose reports are included in this computation; and

(5) Subtract not less than 4 cents nor more than 5 cents to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants located within the 70-mile zone.

§ 941.8 *Payment for milk*—(a) *Time and method of payment.* On or before the 18th day after the end of each delivery period each handler shall pay each producer, for milk purchaser or received during the delivery period, an amount of money representing not less than the total value of such milk, at the uniform price per hundredweight, computed pursuant to § 941.7 (b) and subject to the location adjustments and butterfat differential set forth in this section.

(b) *Location adjustments to producers.* In making payments to producers pursuant to paragraph (a) of this section, handlers shall deduct with respect to all milk purchased or received from producers at a plant located more than 70 miles by rail or highway, whichever is the shortest, from the City Hall in Chicago, the amount specified as follows:

	Cents per cwt.
Within 71 to 85 miles	2
Within 86 to 100 miles	4
Within 101 to 115 miles	6
Within 116 to 130 miles	8
Within 131 to 145 miles	10
Within 146 to 160 miles	12
Within 161 to 175 miles	14

For each 15 miles or part thereof beyond 175 miles from the City Hall in Chicago, an additional ½ cent per cwt.

(c) *Butterfat differential to producers.* The uniform price paid to producers shall be plus or minus, as the case may be, 4 cents per hundredweight for each one-tenth of 1 percent above or below 3.5 percent average butterfat content of milk delivered by any producer during any delivery period.

(d) *Producer-settlement fund.* The market administrator shall establish and maintain a separate fund known as "the producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (e) and (g) and out of which he shall make all payments to handlers pursuant to paragraphs (f) and (g) of this section: *Provided,* That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each delivery period, the market administrator shall compute the amount by which each handler's net pool obligation, including the payments to producers which are required to be made pursuant to § 941.6, is greater or less than the sum obtained by multiplying such handler's net pooled milk by the uniform price and shall enter such amount on each handler's account as such handler's pool debit or pool credit, as the case may be, and render such handler a transcript of his account.

(e) *Payments to the producer-settlement fund.* On or before the 16th day after the end of each delivery period each handler shall make full payment to the market administrator of any pool debit balance shown on the account rendered, pursuant to paragraph (d) of this section, for the preceding delivery period.

(f) *Payments out of the producer-settlement fund.* On or before the 17th day after the end of each delivery period, the market administrator shall pay to each handler the pool credit balance shown on the account rendered, pursuant to paragraph (d) of this section, if any, for the preceding delivery period, less any unpaid obligations of the handler. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 18th day after the end of each delivery period, has not received the balance of the payment due him from the market

administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his total payments uniformly to all producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(g) *Adjustments of errors in payments.* Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

§ 941.9 *Expense of administration*—(a) *Payments by handlers.* As his prorata share of the expense of the administration hereof each handler, except those handlers exempt from the provisions hereof as set forth in § 941.6 (a), shall pay to the market administrator, on or before the 18th day after the end of each delivery period, a sum not exceeding 2 cents per hundredweight with respect to all milk purchased or received by him during such delivery period from producers, from sources other than producers, or from other handlers, or produced by him, the exact sum to be determined by the market administrator, subject to review by the Secretary: *Provided,* That each handler which is a cooperative association shall pay such prorata share of expense of administration only on that milk of producers actually received at a plant of such cooperative association, or caused to be delivered by such cooperative association to a plant from which no milk or cream is disposed of in the marketing area.

(b) *Suits by market administrator.* The market administrator may maintain a suit in his own name against any handler for the collection of such handler's pro-rata share of expense set forth in this section.

§ 941.10 *Marketing services*—(a) *Marketing service deduction.* In making payments to producers pursuant to § 941.8, each handler, with respect to all milk received from each producer during each delivery period, at a plant not operated by a cooperative association of which such producer is a member, shall, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, such determination to be subject to review by the Secretary, and shall, on or before the 18th day after the end of such delivery period, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator for verification of weights, samples, and tests of milk received from such producers and in providing for market information to such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk received from, such producers.

(b) *Marketing service deductions with respect to members of a producers' cooperative association.* In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to § 941.8 as may be authorized by such producers, and pay over on or before the 18th day after the end of each delivery period such deductions to the associations rendering such service of which such producers are members.

§ 941.11 *Market advisory committee.* (a) Subsequent to the effective date hereof, the market administrator may select a representative committee of the industry for purposes (1) of recommendation of amendments to this order, and (2) for conference, counsel, and advice.

§ 941.12 *Effective time, suspension, or termination of order*—(a) *Effective time.* The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) *Suspension or termination of order.* The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) *Continuing power and duty of the market administrator.* If upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided,* That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) *Liquidation after suspension or termination.* Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Now, therefore, H. A. Wallace, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, as amended, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 21st day of June 1940, and declares this order, as amended, to be effective on and after the 1st day of July 1940.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 40-2549; Filed, June 21, 1940; 11:52 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

CHAPTER II—AGRICULTURAL MARKETING SERVICE

AMENDMENT TO POSTING OF MILAN LIVESTOCK SALES CORPORATION [1]

JUNE 21, 1940.

Whereas in accordance with the provisions of section 301 of title III and sec-

[1] Modifies list posted stockyards 9 CFR 204.1.

tion 302 (a) and (b) of an Act of Congress entitled "An Act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes," approved August 15, 1921, the Secretary of Agriculture posted the stockyard known as the Milan Livestock Sales Corporation,[2] Spokane, Washington, as being subject to the provisions of said Act; and

Whereas it now appears that since the date of posting there has been a change in the operator of the stockyard posted as the Milan Livestock Sales Corporation, Spokane, Washington, and that such stockyard is now being operated by the Stockmen's Commission Company as the Inland Empire Stockyards, Spokane, Washington:

Therefore, it is ordered, That the notice of the posting of the Milan Livestock Sales Corporation, Spokane, Washington, be and hereby is amended to show that the correct name of said stockyard is the Inland Empire Stockyards, Spokane, Washington.

[SEAL] GROVER B. HILL,
Assistant Secretary of Agriculture.

[F. R. Doc. 40–2561; Filed, June 22, 1940; 11:47 a. m.]

TITLE 16—COMMERCIAL PRACTICES

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. 4048]

IN THE MATTER OF LENOIR WOODFINISHING COMPANY, INC., ET AL.

§ 3.15 (a) (1) *Bribing customers' employees—To influence employers—Employees of private concerns:* § 3.15 (b) *Bribing customers' employees—To purchase or push donor's goods.* Giving sums of money or other things of value, on the part of respondent company and respondent individual, and their representatives, etc., and in connection with offer, etc., in commerce, of their paints, varnishes, stains, thinners, sealers or other woodfinishing products, to officials or employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' woodfinishing materials for use by their employers, or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of respondents' products by their employers, prohibited. (Sec. 5, 38 Stat. 719, as amended by Sec. 3, 52 Stat. 112; 15 U.S.C., Supp. IV, sec. 45b) [Modified cease and desist order, Lenoir Woodfinishing Company, Inc., et al., Docket 4048, June 18, 1940]

IN THE MATTER OF LENOIR WOODFINISHING COMPANY, INC., AND ARTHUR G. SPENCER, INDIVIDUALLY, AND TRADING AS LENOIR SOLVENT COMPANY

MODIFIED ORDER TO CEASE AND DESIST

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 18th day of June, A. D. 1940.

This proceeding having been heard by the Federal Trade Commission upon the motion of the Commission's Chief Counsel that the order to cease and desist issued herein on April 17, 1940,[1] be modified in certain respects specifically detailed in said motion, and it appearing that on May 23, 1940, the Commission ordered the respondents herein, within ten days from the service upon them of a copy of said motion, to show cause why the order to cease and desist heretofore entered should not be modified as specified in said motion, and it further appearing that a copy of said order to show cause and said motion was served on the respondents herein on May 25 and 27, 1940, respectively, and it further appearing that respondents have failed to show cause within the ten-day period provided for why the motion of the Commission's Chief Counsel should not be granted, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the respondents, Lenoir Woodfinishing Company, Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Company, and their representatives, agents and employees, directly or through any corporate of other device, in connection with the offering for sale, sale and distribution of their paints, varnishes, stains, thinners, sealers and other wood finishing products, in commerce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving, or offering to give, sums of money or other things of value to officials or employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' wood finishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of respondents' products by their employers.

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this modified order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this modified order.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40–2572; Filed, June 24, 1940; 11:09 a. m.]

TITLE 18—CONSERVATION OF POWER

CHAPTER I—FEDERAL POWER COMMISSION

[ORDER NO. 73]

PART 160—MISCELLANEOUS ACCOUNTING ORDERS

SUBMISSION OF SUPPLEMENTAL DATA IN CONNECTION WITH GAS PLANT INSTRUCTION 2–D OF THE UNIFORM SYSTEM OF ACCOUNTS UNDER THE NATURAL GAS ACT

APRIL 9, 1940.

Commissioners: Leland Olds, Chairman; Claude L. Draper, John W. Scott, Clyde L. Seavey. Basil Manley, not participating.

It appearing to the Commission:

(1) That Gas Plant Instruction 2-D of the Uniform System of Accounts, Prescribed for Natural Gas Companies, provides as follows:

"D. Not later than two years after the effective date of this system of accounts, each utility shall have completed the studies necessary for classifying its gas plant as of the effective date of this system of accounts in accordance with the accounts prescribed herein and it shall submit to the Commission the entries it proposes to make to carry out the provisions of this instruction. It shall submit, also, a comparative balance sheet showing the accounts and amounts appearing in its books as of the effective date of this system of accounts and the accounts and respective amounts as of the same date after the proposed entries shall have been made."

(2) That it is necessary in the public interest in carrying out the provisions of the Natural Gas Act and desirable in order to consider adequately the adjusting entries specified in the above-named instruction that data be furnished relative to the history of each natural gas company, its acquisitions of gas operating units or systems, the original cost thereof, the amounts entered in the books in respect thereto, the method of determining original cost, and other related information.

It is ordered:

§ 160.1 *Supplemental data required, Gas Plant Instruction 2–D.* That in submitting the information called for in Gas

[2] 4 F.R. 2758.

[1] 5 F.R. 1596.

Plant Instruction 2–D of the Uniform System of Accounts for Natural Gas Companies, each company shall furnish, insofar as applicable, the following statements, in triplicate, on paper cut or folded to 8½ inches wide by 11 inches long, and properly sworn to by the officer in responsible charge of their compilation:

Statement A showing the origin and development of the company, including, particularly, a description (giving names of parties and dates) of each consolidation and merger to which the company, or a predecessor, was a party and each acquisition of a gas operating unit or system. Any affiliation existing between the parties shall be stated.

Statement B showing for each acquisition of a gas operating unit or system by the reporting company or any of its predecessors: (1) the original cost (estimated only if not determinable from existing records), (2) the cost to the acquiring company, (3) the amount entered in the books as of the date of acquisition, (4) the difference between the original cost and the amount entered in the books, (5) a summary of all transactions affecting such difference, including retirements, between the date of each acquisition and January 1, 1940, and (6) the amount of such difference remaining at January 1, 1940.

If the depreciation, retirement or amortization reserve was adjusted as of the date of acquisition and in connection therewith, a full disclosure of the pertinent facts shall be made.

The amount to be included in Account 100.5, Gas Plant Acquisition Adjustments, as of January 1, 1940, shall be subdivided so as to show the amounts applicable to (a) gas plant in service, (b) gas plant leased to others, and (c) gas plant held for future use.

The procedure followed in determining the original cost of the gas plant acquired as operating units or systems shall be described in sufficient detail so as to permit a clear understanding of the nature of the investigations and analyses which were made for that purpose.

Where estimates are used in arriving at original cost or the amount to be included in Account 100.5, a full disclosure of the method and underlying facts shall be given. The proportion of the original cost of each acquisition which has been determined from actual recorded costs and the proportion estimated shall be shown for each functional class of plant. In addition there shall be furnished in respect to each predecessor or vendor company for which complete construction costs are not available, a description of such plant records as are available, including the years covered thereby.

Statement C showing any amounts arrived at by appraisals, recorded prior to January 1, 1940, in the gas plant accounts (and not eliminated) in lieu of cost to the reporting company. This statement should describe the appraisal and give the complete journal entry at the time the appraisal was originally recorded. If the entry had the effect of appreciating or writing-up the gas plant account, the amount of the appreciation or write-up should be traced, by proper description and explanation of changes, from the date recorded to January 1, 1940.

Statement D showing in detail as of December 31, 1939, gas plant as classified in the books of account immediately prior to reclassification, including under appropriate descriptive headings, any unclassified amounts applicable jointly to the gas department and other departments of the utility.

Statement E showing the adjustments necessary to state, as of January 1, 1940, Account 100, Gas Plant, including its subaccounts, Account 107, Gas Plant Adjustments, and amount of common utility plant includible in Account 108, Other Utility Plant, as prescribed in the Uniform System of Accounts.

Statement F showing gas plant (balance sheet Account 100) as of January 1, 1940, classified according to the subaccounts and the detailed accounts thereunder prescribed in the Uniform System of Accounts, effective on that date, and showing also the amount includible in Account 107, Gas Plant Adjustments, and the amount of common utility plant includible in Account 108, Other Utility Plant.

Statement G showing a comparative balance sheet, as of January 1, 1940, reflecting the accounts and amounts appearing in the books before the adjusting entries have been made and after such entries shall have been made. The balance sheet shall be classified by the accounts set forth in the Uniform System of Accounts Prescribed for Natural Gas Companies.

Statement H giving a suggested plan for depreciating, amortizing, or otherwise disposing of, in whole or in part, the amounts, as of January 1, 1940, includible in Account 100.5, Gas Plant Acquisition Adjustments, and Account 107, Gas Plant Adjustments.

Statement I furnishing the following statistical information relative to gas plant:

Production Plant

Manufactured gas. Show separately for each producing plant the name and location of plant, date of original construction, type of plant (whether coal gas, coke ovens, water gas, etc.), rated 24-hr. capacity in m. c. f. of each unit and of the total plant, and date of installation of each unit installed after original construction. Show also the original cost according to the System of Accounts for each plant, by Accounts 311 to 325, inclusive.

Natural gas. For each "field" includible in Account 100.1, Gas Plant in Service, furnish the number of acres each of gas producing lands owned, of gas producing lands leased by the company, and of land on which gas rights only are owned, as included in Accounts 330.1, 330.2, 330.3, respectively. The same information, classified by subaccounts, shall be furnished for producing and nonproducing acreage includible in Account 100.2, Gas Plant Leased to Others, and in Account 100.4, Gas Plant Held for Future Use.

For each "field" state number of feet of each size pipe used in Field Gathering Lines.

For each "field" state number of wells included in Accounts 332.1 and 332.2, segregated to show the number of wells on each type of producing lands classified under Accounts 330.1, 330.2, 330.3.

When pumping or compressing plants exist within the Production Plant, include the same information as that requested for Compressor Stations under Transmission Plant.

State type and character of Purification Equipment and Residual Refining Equipment included in Accounts 335 and 336, respectively.

Show the original cost according to the System of Accounts for natural gas production plant by each "field" and by Accounts 330.1 to 337.

Storage Plant

Show separately for each location the name of plant, date of construction, type and total capacity (m. c. f.) of each gas holder. State also the original cost according to the System of Accounts for each location, by Accounts 341 and 342.

If depleted gas fields are being repressured, the statements furnished shall reflect the number of acres involved and the original cost according to the System of Accounts (Accounts 341 and 342).

Transmission Plant

State the number of feet of each size of main.

State separately for each compressor boosting station the name of plant, location, date of original construction, rated capacity, type and character of power unit and rated capacity and type of compressor units. Also state the capacity, type and date of installation of each additional power or compressor unit. Show for each station the original cost according to the System of Accounts by Accounts 351, 352 and 354 and by prescribed subaccounts.

Distribution Plant

State number of feet of each size of main and the number of active meters, house regulators and services. Give a general description of the district regulators and the number, by sizes.

Where pumping or compressor stations exist within the distribution plant, include the same information requested for similar stations under transmission plant.

General Plant

Describe the principal structures and improvements.

State the number and type of transportation vehicles and appurtenant equipment.

Give a description of store, shop and laboratory equipment and miscellaneous equipment.

Furnish maps, drawn to scale, upon which indicate transmission mains, location of production plants (artificial and natural), producing and nonproducing leaseholds (indicating thereon producing wells, dry holes and depleted wells), gathering systems, booster and compressor stations, communities served (noting as to wholesale or retail) and large industrial consumers. Where gas is purchased from or sold to other gas utilities, indicate location of measuring stations or gates. If scale maps are not available, furnish sketch maps upon which should be indicated approximate distances between the locations above specified.*

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-2569; Filed, June 24, 1940; 10:52 a. m.]

TITLE 30—MINERAL RESOURCES

CHAPTER III—BITUMINOUS COAL DIVISION

[General Docket No. 12]

IN THE MATTER OF PRESCRIBING DUE AND REASONABLE MAXIMUM DISCOUNTS OR PRICE ALLOWANCES BY CODE MEMBERS TO "DISTRIBUTORS" UNDER SECTION 4, PART II (H), OF THE BITUMINOUS COAL ACT OF 1937, AND ESTABLISHMENT OF RULES AND REGULATIONS FOR THE MAINTENANCE AND OBSERVANCE BY DISTRIBUTORS IN THE RESALE OF COAL, OF THE PRICES AND MARKETING RULES AND REGULATIONS PROVIDED BY SECTION 4 OF THE ACT

ORDER PRESCRIBING DUE AND REASONABLE MAXIMUM DISCOUNTS AND ESTABLISHING RULES AND REGULATIONS FOR THE REGISTRATION OF DISTRIBUTORS AND RULES AND REGULATIONS FOR THE REGISTRATION OF BONA FIDE AND LEGITIMATE FARMERS' COOPERATIVE ORGANIZATIONS

The National Bituminous Coal Commission of the Department of the Interior having instituted this proceeding, pursuant to the provisions of section 4, II (h) of the Bituminous Coal Act of 1937; and

The said Commission having proposed certain maximum discounts, rules and regulations for the registration of the distributors, and rules and regulations for the registration of bona fide and legitimate farmers' cooperative organizations; and

Pursuant to Orders and Notices for hearing of the said Commission, hearings upon these proposals having been held before the Commission on April 25, 1938 to May 5, 1938, January 31, 1939 to February 9, 1939, and May 8, 1939; and

The said Commission, on March 24, 1939, June 6, 1939, and June 20, 1939, having promulgated Rules and Regulations for the Registration of Distributors; and

The Director of the Bituminous Coal Division of the Department of the Interior, the successor to the said Commission, having by Notice and Order dated November 3, 1939, directed that a further and resumed hearing be held before an Examiner of the Division, and having given notice that evidence would be received in conformity with the terms of said Order; and

A hearing having been held before the said Examiner commencing on November 27, 1939, and concluding on December 5, 1939; and

The said Examiner having submitted his Report and proposed Findings of Fact and Conclusions on March 27, 1940, and copies of said Report having been duly served on all parties to these proceedings and made available for inspection at the offices of the Division, the offices of the Bituminous Coal Producers' Board for each of the districts established by the Act, the offices of each statistical bureau of the Division, and the offices of the Division of the FEDERAL REGISTER, National Archives; and

The Director having by Order dated March 27, 1940, provided that any party to the proceedings in General Docket No. 12 might, on or before April 15, 1940, file exceptions to the Report of the Examiner, requests for review by the Director of any of the Findings of Fact and Conclusions of the said Commission on any phase of the matters included in General Docket No. 12, and requests for oral argument; and

Exceptions to the Report of the Examiner, requests for review by the Director of certain Findings of Fact and Conclusions of the Commission, and requests for oral argument before the Director having been duly filed; and

Pursuant to Order of the Director, oral argument having been held before the Director on April 18, 1940; and

The Director having duly considered all of the evidence adduced and all of the proposals, contentions, arguments, motions, petitions, briefs, and exceptions filed by all of the parties to this proceeding;

It is therefore ordered, That, in accordance with the Findings of Fact, Conclusions, and Opinion of the Director entered herewith, the following maximum discounts are found to conform to the requirements of section 4 of the Act and to be due, reasonable, and necessary, and the same be and are hereby prescribed, and ordered to be effective on the same date prescribed as the effective date of minimum prices established under section 4, II (b) of the Act:

Maximum Discounts in Cents per Net Ton, That May Be Made to Registered Distributors From Established Minimum Prices on Coal Which They Purchase for Resale and Resell in Not Less Than Cargo or Railroad Carload Lots

The following maximum discounts by districts apply when coal is purchased for resale by a Registered Distributor:

All districts:
All Coal Resold to a Railroad Company:
On-Line—All Size 5
Off-Line—All Sizes 10

	Discount according to destination		
	(A)[1]	(B)[2]	(C)[3]
Districts Nos. 1, 2, 3, 4, 6, 7 and 8:			
All coal *except:* Cannel coal, coal resold to a Retail Coal Dealer or Railroad Company, coal which is transported in a cargo vessel to the unloading facilities of the Distributor's vendee, Vessel Fuel and Bunker Fuel	12	12	12
Coal Resold to a Retail Coal Dealer:			
All Lump sizes larger than 3" and double-screened coal with a bottom size 2½" or larger	17	22	25
All other sizes	17	17	20

[1] All destinations in the States of Maine, New Hampshire, Massachusetts, Vermont, Rhode Island, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Maryland, West Virginia, that portion of Ohio lying east to the Sandusky-Galion line, and that portion of Canada lying east of Sault Ste. Marie, except Recommended Market Area 21.

[2] All destinations in the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Virginia, Tennessee, Kentucky, Indiana, Illinois, the lower peninsula of Michigan, that portion of Louisiana east of the Mississippi River, the City of St. Louis, Missouri, and Recommended Market Area 21 in Canada.

[3] All destinations not included in A and B above.

All Destinations

All districts:
Channel Coal:
All Lump Sizes 50
All Double-Screened Sizes and Chips 35
All Other Sizes 20
All Coal which is Transported in a Cargo Vessel to the Unloading Facilities of the Distributor's Vendee 12
All Bunker or Vessel Fuel—All Sizes 12

When Resold to Any Purchaser Other Than a Railroad Company

District No. 5:
All Lump Coal 25
All Double-Screened Coal 20
All Other Sizes 12
Districts Nos. 9, 10 and 11:
Lump Sizes 2" or larger; and Double-screened sizes with bottom size 2" or larger 22
Lump Sizes under 2"; and Double-screened coals with a bottom size under 2"[1] 17
All Other Sizes 12
District No. 12:
Mine Run and Screenings 12
All Other Sizes 25
District No. 13:
Lump Sizes 2" or larger; and double-screened coal with a bottom size 2" or larger 25
Lump Sizes under 2"; and Double-screened coal with a bottom size under 2"[1] 20
All Other Sizes 12

[1] Does not include dedusted screenings which are included under the designation "All Other Sizes".

*§ 160.1 issued under the authority contained in secs. 8 (a), 10 (a), 16, 52 Stat. 825, 826, 830; 16 U.S.C. Sup. 717g (a), 717i (a), 717o.

	When resold to any purchaser other than a railroad company	
	(A) [1]	(B) [2]
District No. 14:		
All Lump Sizes; and Double-screened sizes with a bottom size 2" or larger	50	30
Double-screened sizes with a bottom size under 2" [3]	40	20
All Other Sizes	25	12

[1] Destinations in the States of Oklahoma and Texas.
[2] All destinations not included in (A).

	When resold to any purchaser other than a railroad company	
	(A) [1]	(B) [2]
District No. 15:		
All Lump Sizes; and Double-screened sizes with a bottom size 2" or larger	50	22
Double-screened sizes with a bottom size under 2" [3]	40	17
All Other Sizes	25	12
District No. 16:		
All Lump Sizes; and Double-screened coals with a top size over 2½" and a bottom size over 1½"	25	
Mine Run; and Double-screened coals with a top size over 1½" and a bottom size 1½" or smaller	15	
All slack sizes; and double-screened coals with a top size 1½" or smaller	12	
Districts Nos. 17 and 18:		
All Lump Sizes; and Double-screened coals with a bottom size 2" or larger	50	40
Double-screened coals with a bottom size under 2" but larger than 1"	40	30
All Other Sizes	25	15

[1] Destinations in the States of California, Texas and Oklahoma and those which are west of the Cascade Mountain Range in the States of Oregon and Washington.
[2] All destinations not in (A) above.
[3] Does not include dedusted screenings which are included under the designation "All Other Sizes".

	When resold to any purchaser other than a railroad company		
	(A) [1]	(B) [2]	(C) [3]
District No. 19:			
All Lump Sizes; and Double-screened coal with a bottom size 2" or larger	50	40	25
Double-screened coals with a bottom size under 2" but larger than 1"	40	30	17
All Other Sizes	25	15	12

[1] Destinations in the State of California and those which are west of the Cascade Mountain Range in the States of Oregon and Washington, and the Territory of Alaska.
[2] Destinations within the Territory commonly known as the "Inland Empire," and destinations within the States of Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, Nevada and South Dakota. (The "Inland Empire" may be defined as that territory embracing that portion of the State of Washington east of the Cascade Mountain Range, that portion of northeastern Oregon lying east of the Cascade Mountain Range and north of and including Pendleton, Oregon, and that portion of Idaho north of and including Grangeville.)
[3] All destinations not included in (A) and (B) above.

	When resold to any purchaser other than a railroad company		
	(A) [1]	(B) [2]	(C) [3]
District No. 20:			
All Lump Sizes; and Double-screened coal with a bottom size 2" or larger	50	40	25
Double-screened coals with a bottom size under 2" but larger than 1"	40	30	17
All Other Sizes	25	15	12

[1] Destinations in the State of California and those which are west of the Cascade Mountain Range in the States of Oregon and Washington, and the Territory of Alaska.
[2] Destinations within that territory which is commonly known as the "Inland Empire," and destinations within Colorado, Iowa, Kansas, Minnesota, Nebraska, Nevada and South Dakota. (The "Inland Empire" may be defined as that territory embracing that portion of the State of Washington east of the Cascade Mountain Range, that portion of northeastern Oregon lying east of the Cascade Mountain Range and north of and including Pendleton, Oregon, and that portion of Idaho north of and including Grangeville.)
[3] All destinations not included in A and B above.

	When resold to any purchaser other than a railroad company		
	(A) [1]	(B) [2]	(C) [3]
District No. 22:			
All Lump sizes; and Double-screened coal with a bottom size 2" or larger	50	40	25
Double-screened coals with a bottom size under 2" but larger than 1"	40	30	17
All Other Sizes	25	15	12

[1] Destinations in the State of California and those which are West of the Cascade Mountain Range in the States of Oregon and Washington.
[2] Destinations within the territory commonly known as the "Inland Empire," and destinations within the States of Iowa, Minnesota, Nebraska, Nevada and South Dakota. (The "Inland Empire" may be defined as that territory embracing that portion of the State of Washington east of the Cascade Mountain Range, that portion of northeastern Oregon lying east of the Cascade Mountain Range and north of and including Pendleton, Oregon, and that portion of Idaho north of and including Grangeville.)
[3] All destinations not included in (A) and (B) above.

District No. 23:	
All Lump sizes; and Double-screened sizes with a bottom size 2" or larger	50
Double-screened sizes with a bottom size under 2" and screenings larger than ⅜"	40
All Other Sizes	25

It is therefore ordered, That, in accordance with the Findings of Fact, Conclusions, and Opinion of the Director entered herewith,[1] the following Rules and Regulations for the Registration of Distributors are found to conform to the requirements of Sections 2 and 4 of the Act and to be due, reasonable, and necessary rules and regulations to require the maintenance and observance by distributors in the resale of coal, of the prices and marketing rules and regulations provided by Section 4 of the Act, and the same be and are hereby established;

[1] Filed as a part of the original document.

§§ 304.10, 304.11, 304.12, 304.13, 304.16, and 304.17 are ordered to be effective immediately; §§ 304.14, 304.15, 304.18, and 304.19 are ordered to be effective on the same date prescribed as the effective date of minimum prices established under section 4, II (b) of the Act:

PART 304—BITUMINOUS COAL CODE

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RULES AND REGULATIONS FOR REGISTRATION OF DISTRIBUTORS

§ 304.10 *Meaning of terms*—(a) *"Distributor".* A "Distributor" is a person who purchases coal f. o. b. the mine for resale and resells it in not less than cargo or railroad carload lots, without physically handling such coal: *Provided, however,* That where a dock is used by such person as a facility in the delivery of coal to his vendee, and such transaction is recognized by custom to be definitely wholesale in character, the fact that he physically handles such coal shall not preclude such person from being a distributor: *Provided, further,* That in King County, State of Washington, a distributor may physically handle by storage in inland yards for subsequent delivery for industrial consumption only, coal known as fines or slack, ⅜" and less, if such transaction is recognized by custom to be definitely wholesale in character.

(b) *"Carload lot".* "Carload lot" is a quantity of coal equivalent in tonnage to not less than the minimum carload weight specified for the loading of bituminous coal, at carload rates, in the official effective tariffs of rail carriers at the point of origin or at the rail shipping point nearest the mine where the coal is produced, and shipped to a single vendee to one unloading point: *Provided, however,* That on coal reshipped overland from docks, or inland storage yards in King County, State of Washington, coming within the proviso contained in the definition of the term "distributor" in subsection 1 hereof, the minimum weight per carload lot shall

be not less than the minimum carload as prescribed in effective tariffs of railroads applicable from such reshipping points: *Provided, further,* That when coal is delivered in such lots in vehicles of insufficient capacity to transport an entire carload-lot quantity in one transaction, the distributor's vendee must accept delivery of an entire carload-lot quantity, as if the delivery were to be made in a single vehicle, but in no event shall delivery be continued over a period longer than is actually necessary to accomplish such delivery in a continuous flow.

(c) *"Cargo lot".* "Cargo lot" means a quantity of coal not less than a "carload lot" as defined herein, which is loaded for transportation by vessel, boat or barge.

(d) *"Resale".* "Resale", as herein applied to a distributor, means an agreement whereby the distributor transfers the ownership in coal *to a single vendee* for a consideration in terms of price.

(e) *"Dock".* A "dock" is physical property located on or adjacent to navigable water, which property is used in the distribution of coal in commerce or for delivery to commerce carriers, and at which property coal is stored, handled or transferred from or to transportation conveyances.*

§ 304.11 *Registration of distributors*— (a) *Application, general.* Distributors of coal desiring to qualify themselves so as to be entitled to receive from Code members discounts from minimum prices established by the Division shall make application to be designated as registered distributors in the manner following:

(b) *Form for application.* The application shall be made upon forms provided by this Division, and upon approval of such application the applicant shall be registered and designated by this Division as a "registered distributor".

(c) *Verification and contents.* The application to be filed for registration as a distributor shall be duly verified and shall, among other things, set forth:

(1) The name of the applicant and the name under which the business is conducted.

(2) The address of the applicant's principal place of business, together with the address of each branch office, yard, dock, or other storage facility.

(3) The form or organization of applicant's business, whether corporate, partnership, cooperative, farmers' cooperative organization, individual, or other form, indicating the State and year in which incorporated, if a corporation, of the year in which the business was organized, if unincorporated.

(4) If applicant is a partnership, the names and addresses of all partners interested therein; if a corporation or other organization, (1) the names and addresses of all officers, directors, and managers, specifying the shares of stock owned and the office held by each; (2) the names and addresses of stockholders individually owning more than 5% of the outstanding stock, the amount held by each, and also of any other persons indirectly or beneficially interested in the ownership of applicant; (3) the names and addresses of all other parties in interest, such as bondholders, noteholders, etc., where such information is in the possession of the applicant. If a cooperative organization, the approximate number of members.

(5) The total tonnage of bituminous coal handled by the applicant during each of the two calendar years preceding the date of the filing of the application, and the manner in which handled.

(6) A statement of the applicant's affiliation, if any, with any coal producer, transporter, processor, distributor, retailer, or consumer of coal, showing the extent of ownership in or by affiliated companies, the nature of the affiliate's business, and transactions with affiliate during each of the two calendar years preceding the date of the filing of the application.

(7) A statement of the applicant's sale, resale or delivery of bituminous coal which has been physically handled. State the volume of such transactions (tonnage) during each of the two calendar years preceding the date of the filing of the application.

(d) *Confidential information.* The above information, other than the names and addresses of such applicants, shall be held by the Division as the confidential records of said parties and shall not be made public without the consent of the parties from whom the same shall have been obtained, except where such disclosure is made in evidence in any hearing before the Division or any court and except that such information may be compiled in composite form in such manner as shall not be injurious to the interests of any distributor and, as so compiled, may be published by the Division.*

§ 304.12 *Terms of "Agreement by Registered Distributor"*— (a) *Filing signature and acknowledgment.* Each application must be accompanied by "Agreement by Registered Distributor" hereinafter set forth, properly signed and acknowledged:

(1) On behalf of a corporation, by a principal officer of the corporation duly authorized to act.

(2) On behalf of a partnership, by any partner.

(3) On behalf of an individual, by the applicant or his attorney duly authorized to act.

(4) In the case of any other form of business organization, by a person or persons legally authorized to execute an application on behalf of the applicant.

(b) *"Agreement by Registered Distributor".* The undersigned distributor agrees, upon being registered as a "Registered Distributor" by this Division for the purpose of qualifying to receive distributors' discounts established by this Division:

(1) Not to accept or receive any distributor's discount in excess of that prescribed by this Division.

(2) Not to contract to sell or resell, not to sell or resell, nor offer for sale or resale, any coal at a price below the applicable minimum price or greater than the maximum price as established by this Division at the time of the making of the contract or offer, and every contract to sell or resell and every offer for sale or resale shall provide that the price to be paid for the coal to be delivered thereunder shall be not less than the applicable minimum price or greater than the maximum price in effect at the time of delivery, except when authorized to do so by the Orders or established marketing rules and regulations of this Division.

(3) Not to violate the provisions of section 4, II (i) of the Bituminous Coal Act of 1937, relating to "unfair methods of competition".

(4) Not to accept or retain a distributor's discount on coal unless such coal is purchased for bona fide resale and is actually resold in not less than cargo or railroad carload lots without physically handling such coal: *Provided, however,* That where a dock or inland storage yard comes within the proviso contained in the definition of the term "distributor" in subsection 1 of Section I hereof and such dock or inland storage yard is used by such distributor as a facility in the delivery of coal to his vendee and such transaction is recognized by custom to be definitely wholesale in character, the fact that such distributor physically handles such coal shall not preclude him from accepting or retaining a distributor's discount.

(5) To abide by the marketing rules and regulations from time to time established by this Division and all pertinent orders of this Division.

(6) To furnish or cause to be furnished to this Division a copy of every resale contract or order, a copy of each invoice to distributor's vendee, together with a copy of each credit memorandum, and such other information concerning the sale and distribution of coal, the cost and profit of selling and the distributor's financial relations with affiliated producers and consumers as this Division may require.

(7) Not to accept any distributor's discount on transactions wherein no service of value is rendered to the Code member vendor or where the transaction is entered into between the distributor and his vendee primarily for the purpose of unjustly enriching the distributor, and when except for the incidence of section 4, II (h) of the Act, the consumer would purchase direct from a Code member or the payment of a distributor's discount on such transaction would create unfair competition.

(8) Not to accept or retain a distributor's discount where coal is resold to any

person who owns such distributor or who financially or otherwise controls such distributor, except in a case where this Division has determined that such ownership or control is bona fide, is not established primarily to secure indirect price reductions, and is not within the prohibition of paragraphs 11 and 12 of section 4, Part II (i) of the Act.

§ 304.13 *Certificate of registration*—(a) *Issuance, publication.* After receipt of any such application for registration as a distributor, upon a determination by this Division (whether from the application or after hearing held for such purpose) that the applicant is a bona fide merchant actively, regularly and continuously engaged in the business of purchasing coal for resale and actually reselling it in cargo or railroad carload lots without physically handling such coal (except where such coal is physically handled over or on a dock or inland storage yard which comes within the proviso contained in the definition of "distributor" in subsection 1 of Section I hereof, and such dock or inland storage yard is used by such applicant as a facility in the delivery of coal to his vendees and such transactions are recognized by custom to be definitely wholesale in character), this Division shall approve such application, register such person as a registered distributor, and issue to the applicant a certificate of registration. The Division shall promptly notify each District Board of such registration, and publish from time to time a list of registered distributors, amending such list periodically to show additions, withdrawals or removals.

(b) *Change in management or control, notification.* Each registered distributor shall notify the Division of any change in management or control made during the effective period of such registration.

§ 304.14 *Penalties—revocation and suspension*—(a) *Complaint, investigation, hearing.* At any time upon complaint or upon its own motion, the Division may investigate and determine whether a registered distributor has violated the prescribed rules and regulations, minimum or maximum prices, or orders made by the Division governing the rescale of Code members' coals by such registered distributor.

The registration of such distributor may be revoked, or, in the discretion of the Division, suspended for such period of time as it may deem proper, after hearing held upon reasonable notice and upon proof that such registered distributor has either failed or refused to comply with the requirements of the Act or Division Orders or its marketing rules and regulations, or where such distributor has violated any of the Terms of "Agreement by Registered Distributor" herein provided.

(b) *Effect of false information or failure to state material facts.* Where registration is granted to a distributor upon its false or misleading statements or failure to state material facts affecting its application for registration, the Division may, after hearing held upon reasonable notice to such distributor, revoke such registration and any discounts paid during the effective period of such registration shall be recoverable by the Code member vendor or vendors of such distributor.

(c) *Effect of evasion by affiliate.* Where the registration of a corporation, or its wholly-owned affiliate, is revoked or suspended, the affiliate of the offending distributor, whether parent company or subsidiary, may, after hearing held upon reasonable notice, be suspended by the Division for such period as it deems proper, upon satisfactory proof that either of such affiliated companies secured registration for the purpose of evading the Act or regulations adopted thereunder, or that the affiliate of the offending distributor is being used for the purpose of nullifying or rendering ineffective any penalty that has been imposed upon the offending distributor.

(d) *Removal of names from list of registered distributors, publication.* Upon the revocation or suspension of any registration this Division shall publish, for the information of Code members, a notice of the removal of the name of such distributor from the list of registered distributors previously published by this Division and shall notify each District Board of such action.

§ 304.15 *Reinstatement after suspension*—(a) *Affidavit.* Where a registered distributor has been suspended by this Division for any period of time, he shall submit, at least five days prior to the expiration of such suspension period, to the Director of this Division an affidavit to the effect that, during the period of his suspension, said distributor has neither directly nor indirectly transacted business as a registered distributor, nor received nor been promised any discount which registered distributors are entitled to receive by virtue of registration.

§ 304.16 *Successors of registered distributors*—(a) *Application, time for filing.* Upon the death of a registered distributor or sale or other disposal of his business, his successor in interest or legal representative shall, within not exceeding 90 days in the case of death, or within 60 days in the case of sale or other disposal, apply to this Division for registration; otherwise the registration of such distributor shall expire.

(b) *Effect of filing application.* Upon filing such application within the time above prescribed, the existing registration shall automatically continue until the application either be granted or denied by this Division.

Permit Distributors

§ 304.17 *Discount permit*—(a) *Application, form, filing, contracts.* Any distributor whose application to this Division as a registered distributor has not been approved by this Division, or any registered distributor desiring to secure a discount on a transaction under § 304.19 (b) of these Rules, may, nevertheless, make application to receive a distributor's discount on a specific transaction wherein he purchases coal for bona fide resale and actually resells it in cargo or railroad carload lots without physically handling such coal: Provided, however, that where a dock or inland storage yard comes within the proviso contained in this definition of "distributor" in § 304.10 (a) hereof and such dock or inland storage yard is used by such distributor as a facility in the delivery of coal to his vendee and such transaction is recognized by custom to be definitely wholesale in character, the fact that such distributor physically handles such coal shall not preclude him from accepting or retaining a distributor's discount. Such application shall be executed in quadruplicate (upon forms provided by this Division) and submitted to the Divison, at Washington, D. C., for its approval, setting forth, among other things, the following:

(1) The name of the applicant and the name under which the business is conducted.

(2) The address of his principal place of business and the nature of his business.

(3) The date on which applicant filed with this Division his application for registration as a registered distributor.

(4) The name and address of the Code member or Code members from whom the coal is to be purchased.

(5) The name or number of the mine or mines from which the coal is to be supplied, the number of the district in which located, and the tonnage involved in the transaction.

(6) The name of the customer to whom the applicant intends to resell the coal, together with the destination of the coal, method of conveyance, use, and nature of the customer's business.

(7) The purchase price of the coal and the resale price to the customer, both f. o. b. mine; also, amount of discount to be allowed applicant.

(8) A statement as to whether or not the applicant has previously sold any coal to the customer named in the application, and, if so, the quantity sold in each of the two calendar years preceding the date of the filing of the application.

(9) A statement as to whether or not applicant is related to, or has any direct or indirect financial interest in the customer, or is related to any officer, director, stockholder or employee thereof; and whether or not, to his knowledge, any officer, director, stockholder or employee of the applicant has any such interest in the customer. Conversely, a statement as to whether or not, to his knowledge, the customer or any of its officers, directors, stockholders or employees have any direct or indirect financial connection with the business of the applicant.

(10) A statement to the effect that on the particular transaction covered by the application the applicant will observe the

minimum prices, the Marketing Rules and Regulations, the provisions relating to the "unfair Methods of Competition," and all pertinent orders of this Division.

(11) A statement that an actual service of value will be rendered to the Code member vendor, and that the transaction is not entered into between the Distributor and his vendee primarily for the purpose of unjustly enriching the Distributor; and that unfair competition is not being created by the incidence of section 4, II (h) of the Act, in that the customer would otherwise purchase directly from the Code member;

(b) *Execution, verification. Provided, further,* That each application for a permit shall be properly executed and verified:

(1) On behalf of a corporation, by an officer of the corporation duly authorized to act.

(2) On behalf of a partnership, by any partner.

(3) On behalf of an individual, by the applicant or his attorney, duly empowered for that purpose.

(4) In the case of any other form of business organization, by any person duly authorized to execute an application on behalf of applicant.[1]

(c) *Time of filing.* All such applications for a permit shall be filed with this Division prior to the purchase for resale: *Provided, however,* That nothing herein contained shall prevent the applicant from purchasing and reselling the coal, at not less than the minimum price, subsequent to such filing and prior to action by this Division on the application for a Discount Permit, but the payment and acceptance of the discount on any completed transaction shall be contingent upon the granting of the permit.

(d) *Approval by the division.* Upon a determination by this Division (whether from the application or after hearing held for such purpose) that the transaction covered by the application constitutes a legitimate and essential service to the Code member in connection with the bona fide distribution of his coal and that it otherwise conforms to the requirements and intent of section 4, II (h) of the Act, as well as to the applicable orders of this Division and to the Marketing Rules and Regulations, the Division may approve such application for a permit.

(e) *Procedure after approval.* In the event that such application is approved, two copies of the certificate shall be returned to the applicant, who shall transmit one copy to the Code member vendor, which copy shall be attached by such Code member to the invoice covering the transaction and filed with the Statistical Bureau of the Division in the district wherein the shipping mine is located. The distributor shall file with such Statistical Bureau a copy of the invoice to his customer, attaching thereto the original of the discount permit. One copy shall be transmitted to the appropriate District Board. Where the Application has been denied, one copy thereof shall be retained by the Division for its file, another copy shall be sent to the appropriate Statistical Bureau, another to the appropriate District Board, and the original shall be returned to the applicant.[1]

§ 304.18 *Suspension of permit distributor.* (a) Where a distributor who receives a permit violates the provisions of the Act or regulations and orders of this Division, or falsely states or misrepresents a material fact in his application for such permit, the Division may, after hearing held upon reasonable notice, suspend and bar the said offending distributor from eligibility to apply for and obtain any such permit authorizing him to receive discounts from Code members, for such period of time as the Division may deem proper.[1]

§ 304.19 *Miscellaneous provisions*—(a) *Retail coal.* No distributor's discount shall be accepted by a distributor on coal purchased by such distributor for retailing by him.

(b) *Resale to another retailer.* Where a registered distributor is also engaged, directly or indirectly, in the business of retailing coal, no distributor's discount shall be accepted by him on the purchase of coal for resale to another retailer who is either a registered distributor or the sales agent of a Code member: *Provided, however,* That such a distributor's discount may, nevertheless, be allowed and accepted in a case where, upon application for a permit to cover such transaction, the Division has determined that such transaction would not result in evasion of the applicable minimum price and has issued to the applicant a permit to cover such specific transaction.

(c) *Effect of control by retail purchaser.* No distributor's discount shall be accepted by a distributor on coal purchased by such distributor for resale to any person who owns such distributor or who financially or otherwise controls such distributor: *Provided, however,* That a distributor's discount may, nevertheless, be allowed and accepted in a case where this Division has determined that such ownership or control is bona fide, is not established primarily to secure an indirect price reduction and is not within the prohibition of paragraphs 11 and 12 of Section 4, Part II (i) of the Act, as herein set forth in Section II of this Section.

(d) *Division of Discounts.* The distributor's discount received from a Code member by a registered distributor may be divided among registered distributors entitled to receive such discount.[1]

It is further ordered, That, in accordance with the Findings of Fact, Conclusions, and Opinion of the Director entered herewith, the following Rules and Regulations for the Registration of Bona Fide and Legitimate Farmers' Cooperative Organizations are found to conform to the requirements of sections 2 and 4 of the Act, and to be due, reasonable, and necessary rules and regulations, and the same be and are hereby established; §§ 304.31, 304.32, 304.33, 304.34 and 304.35 are ordered to be effective immediately; §§ 304.36 and 304.37 are ordered to be effective on the same date prescribed as the effective date of minimum prices established under section 4, II (b) of the Act:

RULES AND REGULATIONS FOR REGISTRATION OF FARMERS' COOPERATIVE ORGANIZATIONS

§ 304.31 *Definitions*—(a) *"Farmers' Cooperative Organization."* A "Farmers' Cooperative Organization" is a bona fide and legitimate farmers' cooperative organization duly organized under the laws of any State, Territory, the District of Columbia, or the United States, whether or not such organization grants rebates, discounts, patronage dividends, or other similar benefits to its members.

(b) *"Wholesale or middleman quantity."* A "wholesale or middleman quantity" is a quantity of coal not less than a cargo or railroad carload lot as defined in the Rules and Regulations for the Registration of Distributors.[2]

§ 304.32 *Applicants for registration.* Any farmers' cooperative organization desiring registration shall apply to the Division for registration and upon approval of its application shall be registered and designated by the Division as a "Registered Farmers' Cooperative Organization".[2]

§ 304.33 *Application for registration, verification and contents.* The application to be filed for registration as a farmers' cooperative organization shall be duly verified and shall among other things set forth:

(a) The name of the applicant, the address of applicant's principal place of business (together with the address of each branch office, yard, dock, or other storage facility), date of organization, and the names and post office addresses of the officers and directors, or if unincorporated, the names and addresses of the person or persons in the management and control of such organization.

(b) The form of organization (incorporated or unincorporated) of applicant's business with official citations of the law or laws under which such organization was formed and in accordance with which it carries on its business; also a copy of the certificate of organization issued by the Secretary of State or other issuing officer.

(c) A statement setting forth the territory in which the applicant operates or proposes to operate.

(d) A statement showing the amount of business handled by the applicant for

[1] Issued pursuant to the authority contained in section 2 (a), 50 Stat. 73, 15 U.S.C. Supp. 829 (a), and section 4, II (h), 50 Stat. 81, 15 U.S.C. Supp. § 833 (h).

[2] Issued pursuant to the authority contained in section 2 (a), 50 Stat. 73, 15 U.S.C. Supp. section 829 (a), and section 4, II (i), 50 Stat. 82, 15 U.S.C. Supp. section 833 (i).

its members and the amount of business, if any, handled for non-members in the two calendar years preceding the filing of the application; also, the amount of bituminous coal purchased for resale and resold by applicant to its members and the amount, if any, sold to non-members, in not less than cargo or railroad carload lots in the two calendar years preceding the filing of the application; also, the amount of bituminous coal purchased and used or resold by applicant to its members in less than cargo or railroad carload lots, and the amount of bituminous coal, if any, purchased and resold by applicant to non-members in less than cargo or railroad carload lots.

(e) A certified copy of the articles of association or of incorporation of the applicant, including any amendments which may have been made thereto prior to date of application for registration.

(f) A certified copy of the current by-laws of the applicant, if any.

(g) A statement defining the purposes for which the applicant organization is formed, a statement that applicant is conducting its business as a farmers' cooperative organization in conformity with the legal requirements of the laws under which it is formed, and any other relevant facts showing that it is a bona fide and legitimate farmers' cooperative organization.

(h) A financial statement of the Applicant showing its financial condition as of the date of the filing of the application.

§ 304.34 *Terms of agreement*—(a) *Signature and acknowledgment.* Each application must be accompanied by "Agreement by Registered Farmers' Cooperative Organization", hereinafter set forth, properly signed and acknowledged:

(1) If applicant is incorporated, by a principal officer of the corporation duly authorized to act.

(2) If applicant is unincorporated, by a duly authorized agent.

(b) *"Agreement by Registered Farmers' Cooperative Organization."* The undersigned farmers' cooperative organization agrees, upon being registered as such by the Division for the purpose of qualifying to receive discounts permitted to be paid or allowed to such organizations:

(1) Not to accept or receive any discount in excess of that prescribed by the Division.

(2) Not to contract to sell or resell, not to sell or resell, nor offer for sale or resale, any coal at a price below the applicable minimum price or greater than the maximum price as established by this Division at the time of the making of the contract or offer, and every contract to sell or resell and every offer for sale or resale shall provide that the price to be paid for the coal to be delivered thereunder shall not be less than the applicable minimum price or greater than the maximum price in effect at the time of delivery, except where authorized to do so by the established marketing rules and regulations, rules and regulations for the registration of farmers' cooperatives organizations, or Orders of the Division.

(3) Not to violate the provisions of section 4 II (i) of the Bituminous Coal Act of 1937 relating to "unfair methods of competition".

(4) Not to accept or retain a discount except in the course of its business as a farmers' cooperative organization and not to accept or retain such discount as a device or subterfuge for the purpose of obtaining such a discount for other persons not duly entitled thereto.

(5) To abide by the marketing rules and regulations, rules and regulations for the registration of farmers' cooperative organizations, and all pertinent Orders established from time to time by the Division.

(6) To furnish to and file with the Division a certified copy of any change or modification of applicant's articles of incorporation or association, and any change or modification in the by-laws governing applicant's business in case any such change or modification is made in the future after applicant has filed application for registration, and such other information bearing upon the status of said applicant as a farmers' cooperative organization as the Division may require.[2]

§ 304.35 *Certificate of registration*—(a) *Issuance, publication of list.* After receipt of any such application, the Division, upon a determination (whether from the application or after hearing held for such purpose) that the applicant is a bona fide and legitimate farmers' cooperative organization, entitled to registration, shall approve such application and shall register such applicant as a registered farmers' cooperative organization, and shall issue to the applicant a certificate of registration. The Division shall promptly notify each District Board and the Consumers' Counsel Division of such registration and shall furnish from time to time to all code member producers a list of registered farmers' cooperative organizations, which list shall be amended from time to time as the Division may direct to show additions, withdrawals, or removals.[2]

§ 304.36 *Penalties*—(a) *Revocation and suspension.* (1) At any time upon complaint or upon its own motion, the Division may investigate and determine whether a registered farmers' cooperative organization has violated the minimum prices, marketing rules and regulations, rules and regulations governing the registration of farmers' cooperative organizations, the terms of agreement by registered farmers' cooperative organizations or any pertinent Order of the Division. The registration of such registered farmers' cooperative organizations may be revoked, or, in the discretion of the Division, suspended for such period of time as it may deem proper, after hearing held upon reasonable notice and upon proof that such registered distributor has either failed or refused to comply with the requirements of the Act, minimum prices, marketing rules and regulations, rules and regulations governing the registration of farmers' cooperative organizations, the terms of agreement by registered farmers' cooperative organizations and Orders of the Division.

(2) Where registration is granted to a farmers' cooperative organization upon its false or misleading statements or failure to state material facts affecting its application for registration, the Division may, after hearing held upon reasonable notice to such farmers' cooperative organization, revoke such registration and any discounts paid during the effective period of such registration shall be recoverable by the code member vendor or vendors of such farmers' cooperative organization.

(3) Upon the revocation or suspension of any registration, the Division shall publish a notice of the removal of the name of such registrant from the list of registered farmers' cooperative organizations previously published and shall notify each District Board and the Consumers' Counsel Division of such action.[2]

§ 304.37 *Reinstatement after suspension*—(a) *Affidavit, time of filing.* When a registered farmers' cooperative organization has been suspended by the Division for any period of time, it shall submit to the Division at least five days prior to the expiration of such suspension period an affidavit to the effect that during the period of its suspension said farmers' cooperative organization has neither directly nor indirectly transacted business as a registered farmers' cooperative organization nor received nor been promised any discount which registered farmers' cooperative organizations are entitled to receive by virtue of registration.[2]

It is further ordered, That, except as otherwise noted in the Findings of Fact, Conclusions, and Opinion of the Director filed herewith, the pleadings, motions, contentions, arguments, and exceptions filed by all parties to these proceedings be and are hereby denied.

It is further ordered, That, in accordance with the Findings of Fact, Conclusions, and Opinion of the Director entered herewith, jurisdiction over these proceedings is hereby reserved to the Director, and either upon his own motion or upon petition of any code member, District Board or member thereof, State or political subdivision of a State, distributor, farmers' cooperative organization, the Consumer's Counsel Division of the Office of the Solicitor of the United States Department of the Interior, or any party to the proceedings in General

Docket No. 12, the Director may, at any time after the effective date thereof, institute a proceeding to modify any of the determinations entered herein.

Dated, June 19, 1940.

H. A. GRAY,
Director.

[F. R. Doc. 40-2547; Filed, June 21, 1940; 11:49 a. m.]

[General Docket No. 12]

IN THE MATTER OF PRESCRIBING DUE AND REASONABLE MAXIMUM DISCOUNTS OR PRICE ALLOWANCES BY CODE MEMBERS TO "DISTRIBUTORS" UNDER SECTION 4, PART II (H) OF THE BITUMINOUS COAL ACT OF 1937, AND ESTABLISHING RULES AND REGULATIONS FOR THE MAINTENANCE AND OBSERVANCE BY DISTRIBUTORS IN THE RESALE OF COAL, OF THE PRICES AND MARKETING RULES AND REGULATIONS PROVIDED BY SECTION 4 OF THE ACT

AN ORDER CORRECTING ERRORS IN "FINDINGS OF FACT, CONCLUSIONS AND OPINION OF THE DIRECTOR" AND AN "ORDER PRESCRIBING DUE AND REASONABLE MAXIMUM DISCOUNTS AND ESTABLISHING RULES AND REGULATIONS FOR THE REGISTRATION OF DISTRIBUTORS AND RULES AND REGULATIONS FOR THE REGISTRATION OF BONA FIDE AND LEGITIMATE FARMERS' COOPERATIVE ORGANIZATIONS" DATED JUNE 19, 1940

It appearing that in certain portions of the Findings of Fact, Conclusions and Opinion, and in certain portions of the Order of the Director, dated June 19, 1940,[1] in the above-entitled matter, the words "the District of Columbia" and "that portion of Ohio lying west of the Sandusky-Galion line" were inadvertently omitted where their inclusion was intended, and the word "distributor" was inadvertently used where the words "farmers' cooperative organization" were intended,

It is ordered, That the above-entitled documents be and they are hereby corrected in the following respects:

The words "the District of Columbia," are inserted after the words "Sandusky-Galion line," in the description of "Zone A", as the same appears on Page 19 of the Findings of Fact, Conclusions and Opinion, on Page 1 of Appendix A thereof, and on Page 3 of the Order;

The words "that portion of Ohio lying west of the Sandusky-Galion line" are inserted after the word "Michigan" in the 4th line of the 2nd paragraph on Page 17, and after the word "Michigan" in the description of "Zone B" on Page 19 of the Findings of Fact, Conclusions and Opinion, on Page 1 of Appendix A thereof, and on Page 3 of the Order;

The word "distributor" is stricken and the words "farmers' cooperative organization" are inserted in lieu thereof in the 13th line of the first paragraph of Section VI on Page 4 of Appendix C of the Findings of Fact, Conclusions and Opinion, and in the 8th line from the bottom of Page 20 in Section 304.36 of the Order.

Dated, June 21, 1940.

[SEAL] H. A. GRAY,
Director.

[F. R. Doc. 40-2558; Filed, June 22, 1940; 10:19 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

CHAPTER I—MONETARY OFFICES

PART 151—GENERAL LICENSE NO. 21 UNDER EXECUTIVE ORDER NO. 8389,[1] APRIL 10, 1940, AS AMENDED, AND REGULATIONS[2] ISSUED PURSUANT THERETO, RELATING TO TRANSACTIONS IN FOREIGN EXCHANGE, ETC.

A General License is hereby granted authorizing banking institutions within the United States to make all payments, transfers and withdrawals from accounts in the name of the Netherlands Trading Society East, London.

Banking institutions within the United States making such payments, transfers or withdrawals shall file promptly with the appropriate Federal Reserve bank weekly reports showing the details of the transactions during such period.*

[SEAL] D. W. BELL,
Acting Secretary of the Treasury.

JUNE 21, 1940.

[F. R. Doc. 40-2552; Filed, June 21, 1940; 3:47 p. m.]

TITLE 46—SHIPPING

CHAPTER II—UNITED STATES MARITIME COMMISSION

[General Order No. 24]

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND CONTRACTORS

PART 284—DETERMINATION OF "COST" AS AN ELEMENT OF CAPITAL EMPLOYED UNDER THE MERCHANT MARINE ACT, 1936

Sec.

284.1 Cost as an element of capital employed.
284.2 Cost of vessels purchased by the contractor.
284.3 Cost of vessels constructed for the contractor.
284.4 Residual value of vessels.
284.5 Computation of depreciation.
284.6 Cost of additions, betterments and reconditioning.
284.7 Determination of prolongation of economic life.
284.8 Effective date.

§ 284.1 *Cost as element of capital employed.* Cost, as an element of capital employed under the Merchant Marine Act, 1936, shall be actual cost, not cost of replacement or reproduction.*† [Par. 1]

§ 284.2 *Cost of vessels purchased by the contractor.* In the case of vessels purchased by the contractor, by his predecessor, or by a person presently or previously affiliated in any way with the contractor, cost shall be the actual purchase price paid or agreed to be paid for the vessel in money and shall not include any commissions paid officers, directors or major stockholders, or capitalized losses or expenses, unless such capitalized expenses represent actual additions or betterments to the vessel, and without adjustment for gains or losses attributed to restricted trade or other provisions of contracts under which such vessels were acquired.*† [Par. 2]

§ 284.3 *Cost of vessels constructed for the contractor.* In the case of vessels constructed for the contractor or his affiliate or predecessor, cost shall be the actual cost of construction plus such other actual expenditures which in accordance with good accounting practice may be properly capitalized plus subsequent additions and betterments.*† [Par. 3]

§ 284.4 *Residual value of vessels.* The residual value of vessels for the purposes of "capital necessarily employed", and for the purpose of depreciation, shall be considered as 2½ per cent of the original construction cost of the vessel but shall not exceed, in the case of vessels acquired by purchase, the purchase price as hereinbefore defined.*† [Par. 4]

§ 284.5 *Computation of depreciation.* Depreciation shall be computed on the basis of a twenty-year life, beginning at the date the vessel was delivered by the shipyard.

If the vessel was constructed for the contractor the amount to be written off as depreciation shall be the difference between cost as above defined, and residual value, and shall be written off in equal installments of 1/20th each year. In the case of vessels acquired after construction, the difference between cost and residual value shall be written off in equal annual installments during the remainder of the vessel's twenty-year life.*† [Par. 5]

§ 284.6 *Cost of additions, betterments and reconditioning.* The actual cost of additions, betterments, and reconditioning, when performed after acquisition of a vessel by the contractor, his affiliate or predecessor, shall be written off in equal annual installments between the date such addition, betterment, or recondition-

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[1] See page 2345.

[1] 5 F.R. 2279.

[2] 5 F.R. 1680.

* Part 151; sec. 5 (b), 40 Stat. 415 and 966; sec. 2, 48 Stat. 1; Public Resolution No. 69, 76th Congress; 12 U.S.C. 95a; E.O. 6560, Jan. 15, 1934; E.O. 8389, April 10, 1940; E.O. 8405, May 10, 1940; E.O. 8446, June 17, 1940; Regulations, April 10, 1940, as amended May 10, 1940 and June 17, 1940.

*§§ 284.1 to 284.8, inclusive, issued under authority contained in Merchant Marine Act, 1936, 49 Stat. 1985, 46 U. S. C. 1101.

†The source of §§ 284.1 to 284.8, inclusive, is General Order No. 24, United States Maritime Commission, approved June 14, 1938.

ing was completed and the end of the twenty-year life of the vessel.*† [Par. 6]

§ 284.7 *Determination of prolongation of economic life.* Whether or not reconditioning prolongs the economic life of a vessel beyond twenty years will be determined by the Commission in each individual case.*† [Par. 7]

§ 284.8 *Effective date.* This regulation shall become effective as of July 1, 1937.*† [Par. 8]

By Order of the United States Maritime Commission.

W. C. PEET, Jr.,
Secretary.

JUNE 14, 1938.

[F. R. Doc. 40-2565; Filed, June 24, 1940; 10:16 a. m.]

[General Order No. 31]

PART 286—RULES AND REGULATIONS FOR THE ESTABLISHMENT AND MAINTENANCE OF THE STATUTORY CAPITAL AND SPECIAL RESERVE FUNDS AND FOR THE DETERMINATION OF "CAPITAL NECESSARILY EMPLOYED IN THE BUSINESS" AND "NET EARNINGS"

Sec.
286.0 Order.
286.1 Creation and maintenance of statutory reserve funds.
286.2 Capital necessarily employed in the business.
286.3 Net earnings.
286.4 Preliminary compliance with reserve and recapture requirements.
286.5 Statement of purposes and reservations.

§ 286.0 *Order.* Pursuant to the Merchant Marine Act, 1936, as amended, particularly section 607 (d) thereof, the United States Maritime Commission hereby adopts the following rules and regulations for the establishment and maintenance of the statutory Capital and Special Reserve Funds, including the making of tentative deposits in the said funds in advance of completion of accounting between the United States Maritime Commission (therein referred to as the Commission) and the other party to an Operating-Differential Subsidy Agreement (therein referred to as the Operator) for the year or other accounting period involved; and the determination of "capital necessarily employed in the business" and "net earnings" for the purposes of applying the reserve and recapture provisions of Operating-Differential Subsidy Agreements, under the Act (therein sometimes referred to as the Agreement), to the extent that such rules and regulations are not in conflict with the provisions of the said agreements.*†

*§§ 286.0 to 286.5, inclusive, issued under authority contained in Merchant Marine Act, 1936, 49 Stat. 1985, 46 U.S.C. 1101, particularly sec. 607 (d), 49 Stat. 2005, 46 U.S.C. 1177.

† The source of §§ 286.0 to 286.5, inclusive, is General Order No. 31, United States Maritime Commission, approved June 11, 1940.

§ 286.1 *Creation and maintenance of statutory reserve funds*—(a) *Application of operator and authoritative resolutions.* At or before the time of the first payment required to be made therein, the Operator shall select, and make written application to the Commission for approval of, the depository or depositories with whom it proposes to establish and maintain the statutory Capital Reserve Fund and Special Reserve Fund. For the purposes of this order, contractual Construction Funds and similar funds created by transfers from the statutory Capital Reserve Fund, pursuant to provisions of Construction-Differential Subsidy Agreements between the Commission and the Operator under Title V of the Act, shall be deemed to be a part of the Capital Reserve Fund and shall be subject to the rules and regulations herein prescribed with respect to said Capital Reserve Fund.

When such depository or depositories, satisfactory to the Commission, have been so designated and approved, the Commission will adopt an appropriate resolution authorizing the establishment of the reserve fund involved, setting forth the conditions and restrictions under which it is to be maintained and with respect to withdrawals therefrom, and designating the representatives authorized to execute, on behalf of the Commission, instruments of withdrawal therefrom.

A certified copy of this resolution will be furnished the depository for its guidance in honoring instruments of withdrawal and acting upon other instructions regarding the fund. The Operator also will be furnished a certified copy of this resolution, promptly upon receipt of which, its Board of Directors shall adopt an appropriate resolution with respect to the fund in conformity with the action of the Commission, and a certified copy thereof shall be furnished the Commission for its records.

(b) *Amounts required to be deposited and authorized to be withdrawn*—(1) *Mandatory deposits.* Mandatory deposits (i. e., deposits which are required to be made in the statutory reserve funds, either by the provisions of the Act or of the Agreement or by direction of the Commission under the authority of the Act or of the Agreement) shall be made by the Operator at the times and in the amounts so required without prior application to the Commission and, when based upon preliminary or tentative calculations, shall be subject to adjustment upon the completion of final accounting for the year or other accounting period involved.

The amount of interest earned on investments in the statutory reserve funds which, pursuant to the provisions of the Act and of the Agreement, is required to be deposited in the Capital Reserve Fund, shall be deducted for the purpose of determining the amount, if any, of the "net earnings" of the Operator in excess of ten (10) per centum per annum on the Operator's "capital employed" (remaining after deducting any other payments made from such "net earnings" into the Capital Reserve Fund) which, pursuant to the provisions of the Act and of the Agreement, is required to be deposited in the Special Reserve Fund.

(2) *Voluntary deposits and transfers.* Voluntary deposits (i. e., deposits which, under the provisions of the Act and of the Agreement, the Operator may be permitted to make in the statutory reserve funds, but which are not mandatory) and transfers from the Special Reserve Fund to the Capital Reserve Fund, or from such statutory reserve funds to the general funds of the Operator, shall be made only upon written application to the Commission and receipt of written approval thereof from the Commission. Such application shall include a full statement of facts as to the desirability or necessity of making the deposit or transfer and, when required, shall be supported by adequate financial data.

(3) *Withdrawals.* Withdrawals from the statutory reserve funds shall be made only at the times and in the amounts authorized by the provisions of the Act or of the Agreement or by the Commission under the authority of the Act or of the Agreement. Checks, drafts, or other instruments of withdrawal, after having been executed by the Operator, shall be forwarded to the Commission at Washington with appropriate explanation of the purposes of the proposed withdrawal, including properly certified invoices or other supporting papers. Such instruments of withdrawal, after counter-signature on behalf of the Commission, ordinarily will be forwarded to the payees.

(c) *Investment of statutory reserve funds in securities.* The Commission hereby approves the deposit of interest-bearing direct obligations of the United States or obligations fully guaranteed as to principal and interest by the United States in the statutory Capital or Special Reserve Funds in lieu of cash and the purchase of such obligations with cash on deposit in the said funds.

Subject to the further limitations prescribed in the applicable provisions of the Act and the Agreement, the Operator shall make written application to the Commission in all instances involving the deposit of any other securities in the statutory Capital or Special Reserve Funds in lieu of cash or the purchase thereof with (and to replace) cash on deposit in such funds, the transfer of securities from the Special Reserve Fund to the Capital Reserve Fund, or vice versa, and the replacement of securities on deposit in such funds with cash, and the Operator shall not consummate any such transaction until the written consent of the Commission shall have been received. The application shall describe fully the securities and explain the desirability of the transaction and shall include a statement of the availability of cash in the statutory reserve funds in excess of sums required to meet maturing

obligations or other demands to be liquidated with amounts on deposit in such funds. Every approval by the Commission of an application from an Operator for permission to deposit securities other than direct obligations of the United States or obligations fully guaranteed as to principal and interest by the United States in the statutory reserve funds in lieu of cash, or to purchase such securities with cash on deposit in the said funds, shall be conditioned upon agreement by the Operator forthwith to dispose of such securities upon subsequent request by the Commission.

No monies on deposit in the statutory reserve funds shall be used to purchase securities not actively traded in on exchanges registered under the Securities Exchange Act of 1934, except with the prior permission of the Commission.

Immediately upon the purchase of any securities for deposit in the statutory reserve funds, the Operator shall advise the Commission, giving the date of purchase, a description of the securities, and the price paid therefor (net, brokerage and other charges, and gross).

(d) *Valuation of securities in statutory reserve funds.* The bases for valuation of securities in transactions involving the statutory reserve funds shall be as follows:

(1) Securities initially deposited in the statutory reserve funds in lieu of cash shall be valued at market at the time of such deposit, unless otherwise determined by the Commission.

(2) Securities transferred from the Special Reserve Fund to the Capital Reserve Fund, or vice versa, shall (subject to adjustment for accrued interest) be valued at the same amount as when deposited in the fund from which they are transferred, unless the Commission in approving such transfer shall determine otherwise.

(3) The net proceeds derived from the sale of securities on deposit in either of the statutory reserve funds shall be retained in the reserve fund from which such securities are sold, except that with respect to securities in the Special Reserve Fund purchased at a discount and sold at a profit, so much of such profit as represents the difference between the cost and the par or face value thereof shall be deemed to be interest and shall be deposited in the Capital Reserve Fund.

(4) If securities on deposit in either of the statutory reserve funds are replaced by cash from the general funds of the Operator, the amount of cash to be deposited in such reserve fund, in lieu thereof, shall be the equivalent of the amount at which such securities were valued at the time of their deposit in said fund (with adjustment on account of accrued interest), or the market value thereof at the time of withdrawal, whichever is the higher.

(5) For the purposes of this order, the "market value" of securities shall be determined in the following manner:

(i) With respect to transactions involving the purchase of securities with cash on deposit in the statutory reserve funds or the sale of securities on deposit therein, "market value" shall be the gross price paid or the net price received after proper brokerage and transfer taxes (if any) and adjusted for accrued interest, provided that if such securities are purchased or sold otherwise than upon a registered exchange, the price shall be within the range of transactions on the exchange on the date of such purchase or sale, or if there were no such transactions, then the "market value" thereof shall be determined by the Commission on such basis at it may deem to be fair and reasonable in each individual case.

(ii) In instances where no actual purchase or sale is involved, such as the initial deposit of securities in the statutory reserve funds in lieu of cash or the replacement of securities on deposit therein by cash from the general funds of the Operator, the last sales price thereof on the principal exchange on the day the transfer was made shall be deemed to be the "market value" thereof, or if no such sales were made, the "market value" thereof shall be determined by the Commission on such basis as it may deem to be fair and reasonable in each individual case.

(e) *Time deposits.* Deposits in the statutory reserve funds not invested in securities may be placed in time deposits when, in the judgment of the Commission and the Operator, it is desirable and feasible so to do. No such time deposits requiring withdrawal notice of more than thirty (30) days shall be made, however, until the written consent of the Commission first shall have been obtained.

(f) *Adjustment of tentative deposits.* In any instance in which the amount deposited in the Capital Reserve Fund or the Special Reserve Fund, based on preliminary or tentative calculations, is less than the amount required to be deposited therein, as determined upon the completion of final accounting for the year or other accounting period involved, the deficiency shall be cured promptly by the Operator.

In any instance in which the amount deposited in the Capital Reserve Fund or the Special Reserve Fund, based on preliminary or tentative calculations, exceeds the amount required to be deposited therein, as determined upon the completion of final accounting for the year or other accounting period involved, adjustment thereof shall be accomplished by deducting such over-deposit from amounts subsequently required to be deposited in the fund involved, provided that, to the extent such over-deposits in the Special Reserve Fund are sufficient to cure under-deposits in the Capital Reserve Fund, the adjustment, with the prior approval of the Commission, may be accomplished by transfer from the former to the latter.*†

§ 286.2 *Capital necessarily employed in the business*—(a) *Fundamental basis.* "Capital necessarily employed in the business" or "capital investment necessarily employed in the operation of the subsidized vessels, services, routes, and lines" (such terms hereinafter being referred to as "capital employed") shall be determined upon the basis of the net worth reported by the Operator in its balance sheet as at the end of the month preceding the day after the date of the Agreement (or in the last previous balance sheet deemed by the Commission to fairly present the financial position of the Operator, but adjusted to take into account subsequent changes in net worth and such other changes as the Commission may deem essential to a proper determination of "capital employed" as at the end of such month), and as at each succeeding December 31st during the effective period of the Agreement, adjusted as hereinafter provided. For the purpose of this determination, net worth, as stated in the balance sheet of the Operator, shall be deemed to include capital stock, capital surplus, and earned surplus, provided that capital stock subscribed but not issued as at the date of this determination, or any part thereof, shall be deemed to be so included only from the date on which, and to the extent that, payments are made on account of such subscriptions. Net worth, as thus stated, shall be adjusted in such manner as the Commission may determine to be fair and reasonable, including the elimination of appreciation, adequate statement of the liabilities, and such other adjustments as are consistent with sound accounting principles. In the computation of "capital employed", good will and other intangibles not actually acquired for cash or for a consideration determined by the Commission to be the equivalent thereof, and stock held in treasury shall be excluded, and in instances where, in the judgment of the Commission, good will and other intangibles were acquired improvidently or at an execessive price, the amount thereof shall be excluded also, or reduced, as the Commission may determine, in the calculation of "capital employed".

(b) *Valuation of capital assets.* Subsidized vessels and unsubsidized vessels when included in "capital employed" shall be valued in accordance with General Order No. 24 (5 F.R. 2351), and other capital assets shall be valued at cost, including betterments and reconditioning costs, to the Operator or to any former owner who at any time previous to the acquisition of such assets by the Operator was a subsidiary, holding, affiliate, or associate company of the Operator (hereinafter referred to as a "related company"), whichever is the lower, less depreciation; provided, that the cost of acquisition of any assets acquired in exchange for capital shares or other securities of the Operator from other than a

"related company", shall not be in excess of the fair value of such property at the date of acquisition. No adjustment shall be made in the computation of "capital employed" for the increase in equity in vessels represented by betterments or liquidation of mortgage indebtedness applicable thereto, or for the decrease in such equity represented by the accrual of depreciation, for the year or other accounting period during which such betterments are made, indebtedness is liquidated, or depreciation accrues.

(c) *Adjustment for non-continuous employment of vessels.* The equity of the Operator in vessels (meaning the depreciated value thereof as determined in accordance with General Order No. 24, less the outstanding balance of any mortgage obligations covering such vessels, including such proportion of any blanket mortgage obligations as the Commission may determine to be applicable thereto) shall be included in "capital employed" only during the period of operation or maintenance thereof under the Agreement, except in instances where, by agreement between the Commission and the Operator, the operating results of subsidized vessels temporarily employed in unsubsidized services are taken into account in determining "net earnings" as hereinafter defined for the purposes of the reserve and recapture provisions of the Agreement.

In the event that any of the subsidized vessels is withdrawn from operation in the subsidized service for part of any fiscal period, and the results of the unsubsidized operations in which such vessel subsequently engages are, with the consent or at the direction of the Commission, excluded from the computation of "net earnings" as hereinafter defined, a corresponding reduction shall be made in the calculation of "capital employed" on the basis of the relation that the number of days during which such vessel is so withdrawn bears to the total number of days in the year or other accounting period involved. In instances where an unsubsidized vessel owned by the Operator is operated in the subsidized service and, by agreement between the Commission and the Operator, the results of such operation are included in the computation of "net earnings" as hereinafter defined, then, unless otherwise required by the Commission in connection with its approval of the operation of such vessel in the subsidized service, the equity of the Operator in such vessel (meaning the depreciated value thereof as determined in accordance with General Order No. 24, less the outstanding balance of any mortgage obligations covering such vessel, including such proportion of any blanket mortgage obligations as the Commission may determine to be applicable thereto) shall be included ratably in the calculation of "capital employed" on the basis of the relation that the number of days during which such vessel is so operated bears to the total number of days in the year or other accounting period involved.

(d) *Interim additions and deductions.* Additions to capital, such as cash realized from the sale of stock, paid in surplus, etc., and withdrawals of capital shall be included or deducted (as the case may be) in the computation of "capital employed", pro rata, on th basis of the proportion of such additions or withdrawals represented by the relation that the number of days from the date thereof to the end of the year or other accounting period involved bears to the total number of days within such period, this proportion to be allocated to or between "capital employed" in subsidized and in unsubsidized operations in the manner hereinafter prescribed.

Capital gains and capital losses (except those resulting from the asquisition, loss, sale, or other disposition of vessels) and earnings (or losses) for any accounting period subsequent to the end of the month preceding the day after the date of the Agreement shall be included in the computation of "capital employed" only from the end of the year or other accounting period in which realized (or sustained). Dividends paid out of earnings that have not been included in "capital employed" shall not be deducted from "capital employed."

The equity of the Operator (determined in the manner hereinbefore prescribed) in vessels acquired and in vessels sold, lost through marine disaster or otherwise disposed of during the year or other accounting period involved shall be included in the computation of "capital employed", pro rata, on the basis of the proportion of such equity represented by the relation that the number of days of operation in the subsidized service under the Agreement bears to the total number of days in such period. Simultaneously, the consideration paid or received for such vessels (including claims receivable from insurance underwriters on account of loss thereof, but subject to adjustment to an amount not in excess of final net collections) shall be treated, for the purpose of determining "capital employed", in the same manner as is hereinbefore prescribed with respect to additions to, and withdrawals of, capital.

(e) *Allocation between subsidized and unsubsidized activities.* In instances where the Operator engages in any other activities, in addition to the operation of the subsidized vessels, except extensive non-shipping operations (with respect to which the determination of the net assets allocable thereto shall be accorded special consideration and shall be on such bases as the Commission may determine to be fair and reasonable), the allocation of "capital employed" (other than the equity in vessels which is hereinbefore disposed of), subject to such exceptions as the Commission shall determine to be essential to the production of a fair and reasonable result, generally shall be made as follows:

(1) Assets (and liabilities) employed *exclusively* in the operation of the subsidized vessels and services incident thereto, such as deposits in the statutory Capital and Special Reserve Funds and in the contractual Construction Fund, collateral posted with the Commission in lieu of the performance bond required under the Agreement, and progress payments on vessels under construction to replace the subsidized vessels or augment the subsidized service, shall be allocated entirely to subsidized operations in the computation of "capital employed."

(2) Assets (and liabilities) *not employed* in the operation of the subsidized vessels and services incident thereto (as determined by the Commission), including investments in, advances and loans to, and monies on deposit with "related companies", shall be allocated entirely to unsubsidized operations in the computation of "capital employed", except in instances where "related companies" perform services or supply facilities coming within the purview of Section 803 of the Act, in which instances investments in, and advances and loans to, such "related companies" shall be allocated between subsidized and unsubsidized operations on such basis as the Commission shall determine to be fair and reasonable in each individual case.

(3) The value of inventories of spares aboard vessels, or earmarked in warehouses for specific vessels and not interchangeable, shall be allocated in the same manner as the vessels aboard which they are to be used.

(4) After the allocation of the Operator's equity in the vessels, inventories of vessels' spares, and net assets directly and entirely allocable to subsidized or unsubsidized operations (the latter to include net assets allocable to non-shipping operations), the remainder of the adjusted net worth of the Operator shall be allocated between subsidized and unsubsidized operations on the basis of the relation that the total gross vessel operating revenue (meaning revenue derived from the carriage of cargo, passengers, and mail, and charter revenue, except in instances where, in the judgment of the Commission, the inclusion of the latter would produce a disproportionate result) earned in subsidized and unsubsidized operations, separately (including a ratable proportion of such revenue on voyages in progress at the inception of the Agreement, upon the commencement and termination of each "recapture period" following which "excess profits" are due and payable to the Commission, and upon the termination of the Agreement) bears to the total of such revenue derived from both subsidized and unsubsidized operations. The amount so allocated to subsidized operations shall be deemed to be the proportion of such net assets to be included in "capital employed."

(5) In instances where two or more Agreements are concurrently in effect between the Commission and the Operator for all or part of any year or other accounting period, the allocation of "capital employed" as between opera-

tions under each of such agreements shall be made, if necessary, on the same basis as is prescribed herein for allocation between subsidized and unsubsidized activities.*†

§ 286.3 *Net earnings*—(a) *Fundamental basis.* The net profit of the Operator on its subsidized vessels and services incident thereto (hereinafter referred to as "net earnings") shall be determined by deducting from gross income, as hereinafter defined for the purposes of this order only, such direct vessel operating expenses (including bar and slop chest losses and those resulting from advance and prepaid beyond transactions), contributions to pools for the purpose of equalizing revenue in accordance with pooling agreements, terminal and other auxiliary operating expenses, administrative and general expense, interest expense, amortization of deferred charges, depreciation, taxes (including taxes based upon the portion of the earnings of the subsidized vessels and services incident thereto that is not required to be deposited in the statutory reserve funds, but not including taxes on earnings withdrawn from the statutory reserve funds and paid into the general funds of the Operator or distributed as dividends or bonuses upon termination of the Agreement or at the end of any recapture period as provided therein), and all other charges which customarily are made in accordance with sound accounting practice in determining "net earnings", all as the Commission may determine to be fair and reasonable; provided, that no such deduction shall be made on account of:

(1) Expenditures made or which the Commission finds should have been made to place the subsidized vessels in good running order, condition, and repair, sufficiently tackled, appareled, furnished and equipped at the commencement of such vessel's first voyage under the Agreement,

(2) Expenses incurred in violation of the Act or of the Agreement or on account of any obligations resulting from any action taken in violation of the Act or of the Agreement, or

(3) Expenses found by the Commission to have been clearly improvident, unnecessary, or excessive.

In so far as vessels are concerned, depreciation shall be computed on an economic life of twenty years (in accordance with General Order No. 24) and on the basis of the value at which the vessels are included in "capital employed", as hereinbefore defined.

(b) *Definition of "gross income."* "Gross income" shall include such items as revenue earned from the carriage of cargo, passengers, and mail (including bar and slop chest profits and those resulting from advance and prepaid beyond transactions), charter revenue, gross collections from pools for the purpose of equalizing revenue in accordance with pooling agreements, income from terminal and other auxiliary operations, and such other transactions as the Commission may determine are properly included. "Gross income" shall include also interest earned, dividends received, and other non-operating income, as well as all accruals of operating differential subsidy under the Agreement.

(c) *Allocation between subsidized and unsubsidized activities.* In instances where the Operator engages in any other activities in addition to the operation of the subsidized vessels, except extensive non-shipping operations (with respect to which the determination of the "net earnings" allocable thereto shall be accorded special consideration and shall be on such basis as the Commission may determine to be fair and reasonable), the allocation of "net earnings", subject to such exceptions as the Commission shall determine to be essential to the production of a fair and reasonable result, generally shall be made as follows:

(1) Revenue earned from the carriage of cargo, passengers, and mail, and charter revenue, and direct vessel operating expenses (as detailed in General Order No. 22,[1] Accts. Nos. 600 and 700 (46 CFR 282.600 and 282.700, respectively)) shall be allocated directly to the subsidized and unsubsidized operations in which such revenues were earned and expenses were incurred: *Provided*, That in instances where, by agreement between the Commission and the Operator, the operating results of subsidized vessels in unsubsidized services, or of unsubsidized vessels in subsidized services, are to be taken into account in determining "net earnings" for the purposes of the reserve and recapture provisions of the Agreement, such results shall be allocated directly to the subsidized operations.

(2) Collections from pools and contributions thereto for the purpose of equalizing revenue, in accordance with pooling agreements, shall be allocated directly to the subsidized or unsubsidized operations in which such revenues were earned or expenses were incurred.

(3) Inactive Vessels Expense, necessarily and properly incurred in the maintenance of subsidized vessels during lay-up periods with respect to which subsidy is allowed, shall be allocated directly to subsidized operations, and such expenses of unsubsidized vessels shall be allocated directly to unsubsidized operations.

(4) Subsidy accrued in accordance with the provisions of the Agreement shall be allocated directly to subsidized operations.

(5) The Uniform System of Accounts for Operating-Differential Subsidy Contractors, prescribed by the Commission in General Order No. 22 (46 CFR 282.00–1 et. seq.), provides, among other things, that Income from Terminal Operations, Income from Cargo Handling Operations, Income from Tug and Lighter Operations, and Income from Other Shipping Operations (in instances where such facilities are maintained by the Operator) shall be credited with "agreed amounts" for such services performed for vessels owned by the Operator, with corresponding charges to Vessel Operating Expense. The "agreed amounts", next above mentioned, shall be based on the "going rates" for the services and facilities at the ports involved, or, if there are no established rates, then at the rates for which such services and facilities could be obtained from independent suppliers. The accrual of this intra-company income accomplishes a three-fold purpose, namely:

(a) The inclusion in vessel operating expense accounts of charges on the same basis as if such facilities were not maintained by the Operator,

(b) Reflection of the direct monetary advantage or disadvantage to the Operator, resulting from the maintenance of such facilities, and

(c) Provision of a basis for the equalization of the expense of maintaining such facilities among the accounts of the vessels utilizing them.

In instances where an Operator, or any of its "related companies", maintains such facilities and they are utilized by the subsidized vessels, and, further, where such Operator, or "related companies", charge the subsidized vessels for such facilities on the basis of rates not in excess of the rates charged all other vessels using them, unless, in the opinion of the Commission, direct allocation is practicable, the corresponding expense of maintaining such facilities shall be determined (where necessary) by allocation thereof between subsidized and unsubsidized operations on the basis of the relation that the income so derived from the vessels engaged in each such operation bears to the total income derived from the furnishing of such facilities, except that in the instances of the Operator and its wholly owned subsidiaries, income derived from the furnishing of such facilities to vessels not owned or operated by the Operator, or any of its "related companies", shall not be included in the above calculation, but shall be prorated between subsidized and unsubsidized operations in the same manner as is the expense of maintaining such facilities as thus determined.

The consolidation of the accounts of wholly owned subsidiaries with those of the Operator will have the effect of eliminating the inter-company income and expense represented by charges in the accounts of subsidized vessels for the furnishing of such facilities, and in instances where such facilities supplied by other "related companies" are subject to the provisions of Section 803 of the Act, the charges in the accounts of subsidized vessels shall be reduced to the extent that such charges exceed the expense of maintaining such facilities

[1] 3 F.R. 313; 5 F.R. 647.

as determined in accordance with the foregoing.

(6) Depreciation expense and interest expense on mortgage indebtedness shall be allocated between subsidized and unsubsidized operations on the same basis as the equity of the Operator in the property involved is allocated in the determination of "capital employed", provided that a common basis shall be used for valuation of the property (General Order No. 24 in so far as vessels are concerned).

(7) Income in the form of dividends on investments in "related companies" shall be allocated between subsidized and unsubsidized operations on such basis as the Commission shall determine to be fair and reasonable in each individual case, taking into account, among other things, the treatment of such investments in the determination of "capital employed" and (in instances where such "related companies" perform services or supply facilities coming within the purview of Section 803 of the Act) the method of recovery by the Operator from such "related companies" of profits resulting from the performing of such services or supplying of such facilities to the subsidized vessels.

(8) In instances where in the opinion of the Commission direct allocations are impracticable, and except as otherwise provided herein, income and expense properly accrued in the accounts listed hereunder (in accordance with the Uniform System of Accounts for Operating-Differential Subsidy Contractors prescribed by the Commission in General Order No. 22 (46 CFR 282.00–1 et. seq.)) shall be allocated between subsidized and unsubsidized operations on the basis of the relation that the total gross vessel operating revenue (meaning revenue derived from the carriage of cargo, passengers, and mail, and charter revenue, except in instances where, in the judgment of the Commission, the inclusion of the latter would produce a disproportionate result) earned in subsidized and unsubsidized operations, separately (including a ratable proportion of such revenue on voyages in progress at the inception of the Agreement, upon the commencement and termination of each "recapture period" following which "excess profits" are due and payable to the Commission, and upon the termination of the Agreement), bears to the total of such revenue derived from both subsidized and unsubsidized operations:

Acct. No. 665—Miscellaneous Operating Income (46 CFR 282.665).

Acct. No. 670—Agency Fees, Commissions, and Brokerage Earned (46 CFR 282.670).

Acct. No. 675—Interest Earned (46 CFR 282.675).

Acct. No. 685—Dividends (from other than "related companies") (46 CFR 282.685).

Acct. No. 690—Miscellaneous Other Income (46 CFR 282.690).

Acct. No. 890—Miscellaneous Operating Expense (46 CFR 282.890).

Acct. No. 900—Administrative and General Expense (46 CFR 282.900).

Acct. No. 945—Management and Operating Commissions (46 CFR 282.945).

Acct. No. 950—Advertising (In instances where advertising expense is attributable entirely to passenger traffic, or in the judgment of the Commission substantially so, revenue earned from the carriage of passengers *only* should be employed for the purposes of the allocation between subsidized and unsubsidized operations in the manner above described) (46 CFR 282.950).

Acct. No. 955—Taxes, Other than Federal Income Tax (46 CFR 282.955).

Acct. No. 960—Interest Expense (other than on mortgage indebtedness) (46 CFR 282.960).

Accts. Nos. 971–974—Amortization of Deferred Charges (Amortization expense of long-term leases and permanent improvements, applicable to properties not employed in subsidized operations, should be allocated directly to unsubsidized operations) (46 CFR 282.971–974).

Acct. No. 975—Uncollectible Notes and Accounts Receivable (46 CFR 282.975).

Acct. No. 979—Miscellaneous Deductions from Income (46 CFR 282.979).

(9) In instances where the Operator engages in unsubsidized operations and maintains operating organizations in ports not within the trade route of the subsidized vessels, as described in the Agreement, the overhead expenses incurred, less agency fees, commissions, and brokerage earned, at such ports, shall be allocated directly to unsubsidized operations. Similarly, if, in such instances, the Operator maintains operating organizations at ports not within the trade routes of the unsubsidized vessels (but within the trade route of the subsidized vessels), the overhead expenses incurred, less agency fees, commissions, and brokerage earned, at such ports, shall be allocated directly to subsidized operations.

(10) In instances where branch offices of the Operator, or any of its "related companies", act as agents for the subsidized vessels, the fees or commissions charged in the accounts of subsidized vessels for such services shall be at rates not in excess of those charged unsubsidized vessels of the Operator, or any of its "related companies", or vessels not owned by the Operator or any of its "related companies", for similar services. Unless, in the opinion of the Commission, direct allocation is practicable, the corresponding expense of maintaining such agency offices of the Operator or its "related companies" shall be determined (where necessary) by allocation thereof between subsidized and unsubsidized operations on the basis of the relation that agency fees, commissions and brokerage so derived from the vessels engaged in each such operation bears to the grand total of such income, except that in the instances of branch offices of the Operator and of its wholly owned subsidiaries, agency fees, commissions and brokerage derived from the performance of such services for vessels not owned or operated by the Operator or any of its "related companies", shall not be included in the above calculation, but shall be prorated between subsidized and unsubsidized operations in the same manner as is the expense of maintaining such agency offices as thus determined.

The consolidation of the accounts of wholly owned subsidiaries with those of the Operator will have the effect of eliminating the inter-company income and expense represented by fees or commissions charged in the accounts of subsidized vessels for the furnishing of such services, and in instances where such services supplied by other "related companies" are subject to the provisions of the Act, the fees or commissions charged in the accounts of subsidized vessels shall be reduced to the extent that such charges exceed the expense of maintaining such facilities as determined in accordance with the foregoing.

(11) In instances where two or more Agreements are concurrently in effect between the Commission and the Operator for all or part of any year or other accounting period, the allocation of "net earnings" as between operations under each of such agreements shall be made, if necessary, on the same basis as is prescribed herein for allocation between subsidized and unsubsidized activities.

(d) *Management or operating agency arrangements.* In instances where Operators act as managing or operating agents for other persons or concerns, or vice versa, the amount of the management and operating commissions to be collected or paid, as the case may be) for such services, or the division of Overhead Expenses between the Operator and such other person or concern, shall be on such basis as the Commission shall specify in approval of the arrangement.

(e) *Capital gains and capital losses.* "Net earnings" for the purposes of computations hereunder shall be adjusted so as to exclude capital gains and capital losses.

(f) *Income and expenses resulting from excluded assets.* Except where otherwise agreed between the Commission and the Operator, income from and expenses attributable to assets excluded in the computation of "capital employed", as hereinbefore defined, likewise shall be excluded in the computation of "net earnings": *Provided,* That this shall not apply to vessels on which an operating-differential subsidy is paid under section 708 of the Act.

(g) *Profits from services or facilities furnished by "related companies".* In determining "net earnings", any and all profits resulting from performing services or supplying facilities to the subsidized vessels of the Operator, by persons subject to the provisions of section 803 of the Act, which are required to be ac-

counted for and paid over to the Operator under said section, shall be taken into account. In such instances involving wholly owned subsidiaries, this may be accomplished by consolidating the "net earnings" of the subsidiary with those of the Operator, the Commission reserving the right, however, to require that the adjustment be made in cash.*†

§ 286.4 *Preliminary compliance with reserve and recapture requirements*—(a) *Tentative deposits in statutory reserve funds and recording of excess profits.* Not later than thirty (30) days after the issuance of this order and on or before April 1 of each succeeding year (except as otherwise required by the Act or the Agreement), the Operator shall deposit in the Capital Reserve Fund and in the Special Reserve Fund the amounts required to be deposited therein as at the last preceding December 31st, pursuant to the provisions of current Operating-Differential Subsidy Agreements, based on the requirements of section 607 of the Act: *Provided, however,* That in the event of any dividend being paid out of the earnings of any year or portion thereof prior to April 1 of the succeeding year, deposits representing accrued depreciation and excess profits (if any) shall be made into the Capital Reserve and Special Reserve Funds, either concurrently with the payment of such dividend or prior thereto, based upon the calculations, tentative or otherwise, upon which the Operator's action in declaring the dividend was predicated. The amounts of such deposits shall be calculated in accordance with the rules and regulations for determining "capital employed" and "net earnings" as above prescribed. In instances where audited financial and operating statements have not been prepared by the Operator from its records or by its public accountants, tentative calculations should be prepared for this purpose. If the Operator establishes, to the satisfaction of the Commission, that its working capital would be seriously depleted by making any such deposit in the Special Reserve Fund, the Commission in its discretion may postpone, under such conditions as it may prescribe, the making of part or all of such deposit, provided that the amount so postponed shall not exceed the amount of the unpaid operating-differential subsidy for the period to which the deposit applies.

If, in accordance with these calculations, excess profits accrued to the Commission, pursuant to the "recapture" provisions of the Agreement based on clause 5 of section 606 of the Act, the Operator shall at the same time cause an entry to be made on its books, crediting Acct. No. 550—Recapture Profits—U. S. Maritime Commission (46 C.F.R. 282.550) with the amount thereof, to the extent that such excess profits subject to recapture, cumulative to the end of the year or other accounting period involved, do not exceed the sum of—

(1) Balances required to be on deposit in the statutory Capital and Special Reserve Funds at that date,

(2) Any amounts which shall have been transferred to the general funds of the Operator from either of such reserve funds and not repaid thereto, and

(3) Any prepayments of amounts not due before one year on the principal of notes secured by mortgage on the subsidized vessels or on the purchase of replacement vessels or reconstruction of vessels or additional vessels to be employed by the Operator on an essential foreign trade line, route, or service approved by the Commission.

The extent to which balances in the statutory reserve funds are insufficient to cover the cumulative total of excess profits subject to recapture shall be shown on the balance sheet as a contingent liability.

(b) *Calculation of provision for federal income tax.* For the purposes of these preliminary calculations, provision for Federal Income Tax shall be deducted, in the determination of "net earnings", in an amount computed by applying the income tax rates to the amount of such "net earnings" if same are not in excess of ten (10) per cent of the "capital employed". In instances where the "net earnings", *before* provision for Federal Income Tax, exceed ten (10) per cent of the "capital employed", provision for Federal Income Tax shall be computed by dividing the amount equivalent to ten (10) per cent of such capital by the difference between one hundred (100) per cent and the rate of average income tax thereon, and multiplying the quotient by the rate of average income tax, e. g.,

Hypothesis

(a) 10% of "capital employed"	$100,000.00
(b) Illustrative rate of average income tax on above—15%.	
(c) Difference between 100% and illustrative rate of average income tax—85%.	
(d) "Net earnings", before provision for Federal Income Tax	150,000.00

Computation of Tax

(a) $100,000.00÷(c) 85 = $1,176.-47058 × (b) 15=	$17,647.06

Distribution of Earnings

"Net earnings", before provision for Federal Income Tax	150,000.00
Less: Provision for Federal Income Tax	17,647.06
"Net earnings", after provision for Federal Income Tax	132,352.94
10% of "capital employed"	100,000.00
Balance required to be deposited in Special Reserve Fund (50% subject to recapture by the Commission)	32,352.94

Should the excess of "net earnings", before provision for Federal Income Tax, over 10 per cent of "capital employed" be less than the provision for Federal Income Tax, as above calculated, the deficiency must be deducted from the portion of such "net earnings" represented by 10 per cent of "capital employed".

These calculations of provision for Federal Income Tax, (inapplicable with respect to any earnings otherwise available for distribution to stockholders which, by reason of their being deposited in the statutory Capital or Special Reserve Funds, are exempt from Federal Income Taxes) shall be subject to adjustment, upon final determination by the Bureau of Internal Revenue, of the amount of such tax assessable upon the "net earnings" of the Operator for the year or other accounting period involved. In no event shall the amount of the tentative or final provision for Federal Income Tax deducted in the determination of "net earnings" exceed the amount of such tax reported in the income tax return or assessed (as the case may be) upon the total taxable income of the Operator for the year or other accounting period involved.

(c) *Statements required by the Commission.* Promptly upon the completion of its calculation of the tentative amounts required to be deposited in the statutory reserve funds and of the amount of excess profits, if any, subject to recapture by the Commission, the Operator shall submit to the local district Auditor of the Commission (or to the Chief, Auditing and Financial Analysis Section, Division of Finance, at Washington, if there be no District Auditor of the Commission in the city in which the home office of the Operator is located) a statement in quadruplicate, reflecting the Operator's preliminary calculation of "capital employed", amounts required to be deposited in the Capital Reserve Fund and in the Special Reserve Fund, and excess profits, if any, subject to recapture by the Commission, and also in quadruplicate, the Balance Sheet as at the beginning of the year or other accounting period involved, and the Income Sheet for such period, showing the allocation of "net earnings" as between subsidized and unsubsidized operations.

The statement reflecting the Operator's preliminary calculation of "capital employed", etc., shall be certified by a duly authorized officer of the Operator to the following effect:

This statement correctly sets forth, to the best of my knowledge and belief, the "capital necessarily employed in the business" of the subsidized vessels and services incident thereto, the amounts of the deposits required to be made in the Capital Reserve Fund and in the Special Reserve Fund, and the amount of excess profits subject to recapture by the United States Maritime Commission for the above stated period, pursuant to the provisions of the Operating-Differential Subsidy Agreement dated _____, and in accordance with the rules and regulations prescribed in General Order No. 31 of the

Commission, based on the records of the undersigned Operator at this date.

Name of Operator

Title

Date

The Balance Sheet shall be certified by a duly authorized officer of the Operator to the following effect:

This Balance Sheet, to the best of my knowledge and belief, fairly presents the financial position of the undersigned Operator as at the above date, as reflected in its books of account with which I am familiar, maintained in accordance with the Uniform System of Accounts for Operating-Differential Subsidy Contractors, prescribed by the Commission in General Order No. 22, at this date.

Name of Operator

Title

Date

The Income Sheet shall be certified by a duly authorized officer of the Operator to the following effect:

This Income Sheet, to the best of my knowledge and belief, correctly states the operating results of the undersigned Operator for the above period, as reflected in its books of account with which I am familiar, maintained in accordance with the Uniform System of Accounts for Operating-Differential Subsidy Contractors, prescribed by the Commission in General Order No. 22, at this date.

Name of Operator

Title

Date

The statement of "capital employed", amounts required to be deposited in the Capital Reserve Fund and in the Special Reserve Fund, and excess profits (if any) subject to recapture by the Commission, shall be prepared substantially in the form of similar statements prepared by the Commission in connection with final accountings under the so-called Temporary Operating-Differential Subsidy Agreements, copies of which have been furnished Operators with whom such accountings have been completed. In the instances of Operators with whom such final accountings have not been completed, the District Auditors of the Commission should be consulted for advice as to the form to be employed in the preparation of such statements.* †

§ 286.5 *Statement of purposes and reservations.* The purpose of this order is to establish rules and regulations for uniform application in the determination of "capital employed" and "net earnings" in accordance with the reserve and recapture provisions of Operating-Differential Subsidy Agreements in order that, in advance of the completion of annual accountings by the Commission, the Operator shall be in a position to determine, with a reasonable degree of accuracy, the amounts of the deposits required to be made in the statutory reserve funds, of excess profits subject to recapture by the Commission, of "unrestricted profits" available for ultimate distribution to stockholders, and of Federal Income Taxes.

The preliminary or tentative deposits in the statutory reserve funds, calculations of excess profits subject to recapture by the Commission, and entries in the books of account, provided for in § 286.4, are subject to adjustment upon the completion of final accounting for each year or other accounting period involved by the Commission.

The establishment of the rules and regulations prescribed in this order is without prejudice to the right of the Commission to determine upon the employment of other bases for allocation and calculation in any instances where, upon the completion of any annual or final accounting, the results produced by the application of the rules and regulations prescribed herein do not, in the judgment of the Commission, produce fair and reasonable results.

Nothing herein contained shall be construed as a waiver of any requirement that the consent of the Commission be obtained with respect to any transactions, nor as a waiver of any other right reserved to the Commission by the Act or under Operating-Differential Subsidy Agreement.* †

By Order of the United States Maritime Commission.

W. C. PEET, Jr.,
Secretary.

JUNE 11, 1940.

[F. R. Doc. 40-2566; Filed, June 24, 1940; 10:16 a. m.]

TITLE 49—TRANSPORTATION AND RAILROADS

CHAPTER I—INTERSTATE COMMERCE COMMISSION

[Order No. 3666]

REGULATIONS FOR TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Present: J. M. Johnson, Commissioner, to whom the above entitled matter has been assigned for action thereon.

Regulations for the transportation of explosives and other dangerous articles by rail in freight, express, and baggage services, and by water and highway, being under further consideration:

And it appearing, That upon applications made by interested parties, certain proposed new and amended regulations should be established pursuant to section 233 of the Criminal Code (Transportation of Explosives Act), and upon investigation had are found to be in accord with the best-known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport:

It is ordered, That the aforesaid regulations as heretofore published in orders of May 12, 1930, Oct. 14, 1932, Jan. 13, 1934, Aug. 24, 1934, Apr. 8, 1935, and Aug. 27, 1936, be and they are hereby amended as follows:

PART I—RAIL FREIGHT

Amending par. 56 (b), order Aug. 27, 1936, as follows (*packing dynamite*):

(Add) Exception to par. 56 (b) as follows: Dynamite containing 10 percent or less of liquid explosive ingredient in cartridges or bags as prescribed in par. 56 (a) may be packed in wooden boxes, gross weight not to exceed 140 pounds, or fiberboard boxes, gross weight not to exceed 65 pounds.

Amending par. 242, order May 12, 1930, as follows (*packing ethylene oxide*):

(Add) Or in tank cars, specification 104A. Outage must be sufficient to prevent tank car from becoming entirely filled with liquid at 105° F.

Amending par. 364, order Apr. 8, 1935, as follows (*packing acid sludge, etc.*):

(Add) These materials, except when containing hydrofluoric acid, are also authorized for transportation in boxed carboys, specification 1A.

Superseding and amending fourth subparagraph, paragraph 485, order Jan. 13, 1934, to read as follows (*packing for aniline oil*):

(4th subpar.) Or in metal barrels or drums, specification 5, 5A, or 5B; or specification 5J, single-trip container; net weight in 110-gallon drums should not exceed 915 pounds; gaskets not less than one-eighth inch thick must be used at bung and filling holes and must be made of hard fiber impregnated with glycerin, or of metal-covered cork, or of impregnated asbestos sheets, or metal-covered asbestos; gaskets and flanges must be thoroughly coated with shellac prior to tightening of the bungs; filled drums must be so placed that bungs will be subjected to hydrostatic head of oil contained therein for a period of not less than 12 hours; the exterior of filled drums must be carefully examined for evidence of aniline oil, any traces of which must be removed by washing off with water or, preferably, weak acetic acid; the space between rolling hoops immediately around the bung should be painted, to aid in the detection of leaks at this point; drums showing no signs of leakage only may be shipped; all returnable drums must bear the following returnable package notice, shellacked to head of drum consignee's name and address:

(Notice to appear on returnable packages remains in force.)

Amending par. 501, order Oct. 14, 1932, as follows (*packing arsenical compounds, etc.*):

(Add as 4th subpar.; 4th subpar. renumbered 5th subpar.) Or in paper

bags, specification 44B, with inside paper bags, specification 2D; bulk packing (inside containers not required) authorized for carload and truckload shipments only. Net weight not over 50 pounds each.

PART IV—SHIPPING CONTAINER SPECIFICATIONS

Specification 24C

Amending specification 24C, order May 12, 1930, as follows:

(Add) 6. Three-piece boxes are authorized as follows:

Material must be double-faced corrugated fiberboard as specified herein for one-piece boxes, except that B-flute type board is permitted; construction and closing must be as specified in specification 23D, except that recessed ends are not permitted; marking must be as specified herein.

Amending order May 12, 1930, as follows:

(ADD) SHIPPING CONTAINER SPECIFICATION 44B

Paper Bags

Construction

1. (a) Bags must be at least 4 thicknesses of No. 1 Kraft bag paper, or equivalent, with a minimum total basis weight of 200 pounds (480 sheets 24 by 36 inches).

(b) Outer sheets must be of highly sized, hard finish, water-proofed stock and at least 60 pounds basis weight, inner sheets not less than 40 pounds each.

(c) Bags to be of "satchel bottom" construction; bottoms to be reinforced with a Kraft paper patch at least 30 pounds basis weight. Other bottoms of equal efficiency are authorized.

(d) Mullen or Cady Test of all Kraft paper used must be not less than 90 percent of basis weight.

(e) Moisture resistant adhesive must be used on all seams and bottom patch.

Top Closure

2. (a) Inner (fourth) ply to be diamond folded, loose; the third ply to be diamond folded and silicated across all its over-lapping folds; the two outer plies to be diamond folded, and cross sealed, front to back and side to side, with gummed tape extending at least 2 inches down sides of bag. Other closures of equal efficiency are authorized.

(b) Sealing tape must be 4 inches wide, of No. 1 Kraft paper, 90 pound basis weight (480 sheets 24 by 36 inches), or equivalent, and having a strength, Mullen or Cady test, of not less than 90 pounds.

Tests

3. Bags as prepared for shipment must be able to withstand 4-foot drops, one on each end and one each on opposite sides, without sifting or rupture.

Marking

4. (a) On each bag with letters and figures at least ½ inch high in rectangle as follows:

ICC—44B

This mark shall be understood to certify that bag complies with all specification requirements.

(b) Name and address of maker located just above or below the mark specified in (a); symbol (letters) authorized if registered with the Bureau of Explosives.

PART V—WATER

Amending table of *recommended stowage*, order Aug. 24, 1934, as follows:

Article	Properties	Label	Outside containers	Stowage
(Add) Acid sludge, sludge acid, spent sulphuric acid, spent mixed acid.	Corrosive liquid.....	White.....	Boxed carboys....	A or B.

It is further ordered, That the aforesaid regulations as further amended herein shall be and remain in force on and after September 10, 1940, and shall be observed until further order of the Commission;

It is further ordered, That compliance with the aforesaid amendments made effective by this order is hereby authorized on and after the date of approval and publication thereof;

And it is further ordered, That copies of this order be served upon all the respondents herein, and that notice to the public be given by posting in the office of the Secretary of the Commission at Washington, D. C.

Dated at Washington, D. C., this 12th day of June 1940.

By the Commission, Commissioner Johnson.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 40-2567; Filed, June 24, 1940; 10:23 a. m.]

Notices

DEPARTMENT OF THE INTERIOR.

Bituminous Coal Division.

[Docket No. 12]

IN THE MATTER OF PRESCRIBING DUE AND REASONABLE MAXIMUM DISCOUNTS OR PRICE ALLOWANCES BY CODE MEMBERS TO "DISTRIBUTORS" UNDER SECTION 4, PART II (H), OF THE BITUMINOUS COAL ACT OF 1937, AND ESTABLISHING RULES AND REGULATIONS FOR THE MAINTENANCE AND OBSERVANCE BY DISTRIBUTORS, IN THE RESALE OF COAL, OF THE PRICES AND MARKETING RULES AND REGULATIONS PROVIDED FOR BY SECTION 4 OF THE ACT

AN ORDER PROVIDING FOR THE DISTRIBUTION AND PUBLICATION IN THE FEDERAL REGISTER OF THE FINDINGS, CONCLUSIONS AND ORDER OF THE DIRECTOR

The Director, on the 19th day of June 1940, having made Findings of Fact and Conclusions, and having entered his order[1] prescribing due and reasonable maximum discounts and price allowances, and promulgating rules and regulations relating to distributors and farmers' cooperative organizations in the above-entitled matter;

It is ordered, That the said Findings of Fact, Conclusions and Order shall be published in the FEDERAL REGISTER, and copies thereof shall be available for public inspection at the office of the Division of the Federal Register, National Archives, at the office of the Bituminous Coal Division, 734 15th Street NW., Washington, D. C., at the offices of the Statistical Bureaus of the Division and at the offices of the District Boards.

It is further ordered, That copies of the said Findings of Fact, Conclusions and Order shall be mailed to the parties who have filed appearances in Docket No. 12, to the Consumers' Counsel, to each District Board and to each Statistical Bureau of the Division.

It is further ordered, That copies of the said Order shall be mailed to all code members and to all known distributors.

Dated, June 20, 1940.

[SEAL] H. A. GRAY, *Director.*

[F. R. Doc. 40-2546; Filed, June 21, 1940; 11:32 a. m.]

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[41-Tob-1]

INSTRUCTIONS FOR HOLDING REFERENDUM ON FLUE-CURED TOBACCO MARKETING QUOTAS

In the event that the Secretary of Agriculture, pursuant to the provisions of section 312 (a) of the Agricultural Adjustment Act of 1938, proclaims a national marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1941, a referendum of farmers engaged in production of the 1940 crop of flue-cured tobacco will be held, pursuant to the provisions of section 312 (c) of

[1] See page 2345.

said act and in accordance with the regulations hereinafter set forth, on a date to be announced by the Secretary of Agriculture, to determine whether such farmers are in favor of or opposed to such quota and to determine whether such farmers are in favor of or opposed to flue-cured tobacco marketing quotas for the three-year period beginning July 1, 1941.

The following forms will be used:

41–Tob–1—Instructions for Holding Referendum on Flue-cured Tobacco Marketing Quotas.

41–Tob–2—Register of Eligible Voters and Ballots Cast.

41–Tob–3 — Notice — Flue-cured Tobacco Marketing Quota Referendum.

41–Tob–4—Flue-cured Tobacco Marketing Quota Referendum Ballot.

41–Tob–5—Community Summary of Flue-cured Tobacco Marketing Quota Ballots.

41–Tob–6—County Summary of Flue-cured Tobacco Marketing Quota Ballots.

41–Tob–7—State Tabulation of Flue-cured Tobacco Marketing Quota Ballots.

A. VOTING ELIGIBILITY

All farmers engaged in the production of flue-cured tobacco in 1940 are eligible to vote in the flue-cured tobacco marketing quota referendum. Any person who shares in the proceeds of the 1940 flue-cured tobacco crop as owner (other than a landlord of a standing-rent or fixed-rent tenant), tenant, or sharecropper is considered as engaged in the production of flue-cured tobacco in 1940. If several members of the same family participate in the production of flue-cured tobacco on a farm in 1940, the only member or members of such family who shall be eligible to vote shall be the member or members of the family who have an independent bona fide status as operator, share-tenant, or sharecropper and is entitled as such to share in the proceeds of the 1940 crop.

For any farm on which records have been obtained in connection with the 1940 agricultural conservation program showing correctly those persons entitled to receive a share of the proceeds of the tobacco crop grown on the farm in 1940, only those persons so shown as entitled to receive such share shall be eligible to vote in the referendum.

No person shall be eligible to vote in any community other than the community in which he resides, except as follows: (a) Any person who resides in a community in which there is no polling place shall be eligible to vote at the polling place designated for the community nearest to the community in which he is engaged in the production of tobacco in 1940. (b) Any person who does not reside in the county in which he is engaged in the production of tobacco in 1940 may obtain a ballot at the most conveniently located polling place and may cast his ballot by signing his name thereto and mailing it to the county office of the county in which he is engaged in the production of tobacco in 1940 not later than the date of the referendum (the postmark on the envelope in which the ballot was mailed shall be conclusive evidence of the date of mailing).

There shall be no voting by mail (except as provided above) by proxy, or by agent, but a duly authorized officer of a corporation, firm, association, or other legal entity, or a duly authorized member of a partnership, may cast its vote.

Farmers who planted flue-cured tobacco in the field in 1940, but will not harvest any tobacco on such acreage for any reason except neglect to farm the planted acreage shall be regarded as engaged in the production of flue-cured tobacco in 1940 and therefore eligible to vote in the referendum. Any farmer who did not plant tobacco in the field shall not be eligible to vote.

No farmer (whether an individual, partnership, corporation, association or other legal entity) shall be entitled to more than one vote in the referendum, even though he may be engaged in the production of flue-cured tobacco in two or more communities, counties or States in 1940.

In the event two or more persons are engaged in producing flue-cured tobacco in 1940 not as members of a partnership but as tenants in common or joint tenants or as owners of community property, each such person shall be eligible to vote.

The following statements will serve as examples to illustrate the eligibility of persons to vote in particular instances.

(a) In the case of a husband and wife engaged in the production of flue-cured tobacco as joint owners of a farm each is eligible to vote; and similarly in the case of a husband and his wife or a father and his son engaged in the production of flue-cured tobacco in 1940 as joint tenants the husband and wife or the father and son, as the case may be, are each eligible to vote.

(b) A person who is considered as a wage hand on a farm but who receives part or all of the proceeds from a fixed acreage of tobacco and thus shares in the proceeds of the 1940 crop of flue-cured tobacco produced on the farm will be considered as a sharecropper and shall be eligible to vote.

(c) If any person gives a member of his family a part of the tobacco crop or its proceeds, but such member of the family does not have an independent status on the farm as a share-tenant or sharecropper then such member of the family is not eligible to vote.

(d) A person acting as administrator, executor, or guardian, or in some similar fiduciary capacity, is eligible to vote for each estate or person for whom he acts in such capacity if such estate or person is engaged in the production of the 1940 flue-cured tobacco crop. In such event the heirs of the estate for whom the administrator or executor acts are not eligible to vote by virtue of being such heirs nor is the person for whom the guardian or other fiduciary acts eligible to vote.

(e) A minor is eligible to vote only if he is the owner-operator of a farm on which flue-cured tobacco is produced in 1940 or if as a party to a bona-fide lease or operating agreement he has an independent status as operator, share-tenant or sharecropper and as such is entitled to share in the proceeds of the 1940 flue-cured tobacco crop in a specified proportion.

B. INSTRUCTIONS TO COUNTY COMMITTEES

The county agricultural conservation committee (hereinafter referred to as the county committee) shall be responsible for the proper holding of the referendum in the county and shall:

1. Have prepared in duplicate, prior to the date of the referendum, a registration list on 41-Tob-2 showing the name and other information required on the form for each farmer in the county who was engaged in the production of flue-cured tobacco in 1940. The registration list should be prepared by communities using as far as possible the records obtained under the 1940 agricultural conservation program. For those farms on which performance has not been checked the county committee should have the respective community committeeman or farm supervisor obtain the following information.

(a) The name of the farm operator;

(b) The name of each share-tenant or sharecropper growing flue-cured tobacco on the farm in 1940;

(c) The acres share of each such person in the tobacco grown on the farm;

(d) The tenure of each such person; and

(e) The name and location of every other farm on which each such person engaged in the production of flue-cured tobacco in 1940.

In obtaining the above information, the farm operator may be requested by letter to visit the county office or a designated place in the community within a specified time for the purpose of furnishing the information; or a community committeeman or supervisor may visit the farm operator and obtain the information. In preparing the registration list (41-Tob-2) it is suggested that the procedure indicated by the example below be followed:

	Farm serial No.	Names of farmers eligible to vote	Tenure of farmer	Initials of committeeman issuing ballot
	A	B	C	D
1	100	Adams, A. A	O	
2		Black, B. B	C	
3		White, W. W	C	
4	106	Brown, B. B. (non-resident).		

If the registration list is prepared in accordance with the example above, the name of the farm operator will be listed in the left side of Column B, and in the lines immediately beneath the line on which the name of the farm operator is listed there will be listed in the right side of Column B the name of each share-tenant or sharecropper on the farm who shares in the proceeds of the 1940 flue-cured tobacco crop. Preferably all farms operated by the same person in any community should be listed in order and the name of such operator listed only once. However, if the name of any person who resides in a community is listed more than once in that community the words "Vote other farm" should be written beside his name for each farm with respect to which it is listed except for the first farm listed for him on the registration list. If the name of any person is listed in any community and such person does not reside in such community the words "Non-resident" should be written beside such person's name.

2. Designate one readily accessible place for balloting in each community and give public notice of the date of the referendum and of the time and place for balloting. Such notice shall be given by posting the notice form (41–Tob–3) at one or more places open to the public within each community as soon as possible after the date of the referendum has been announced.

3. Make use (without advertising expense) of all available agencies of public information, including newspapers and radio, to give flue-cured tobacco farmers in the county full and accurate public notice of the day and hours of voting, the location of polling places, and the rules governing eligibility to vote. Such notice shall be given as soon as possible after the date of the referendum has been announced.

4. Designate three local farmers residing in each community and producing flue-cured tobacco in the community in 1940 as the members of the community referendum committee to conduct the referendum on the national marketing quota for flue-cured tobacco in such community, and name one of the members chairman of the committee. Designate also one such farmer as an alternate to serve on the committee in the event that any of the three regular members cannot serve.

5. In counties with a combined total of less than 200 flue-cured tobacco farms, the county committee may treat the county as one community for the purpose of the referendum and hold the referendum and perform the duties both of county committee and community referendum committee.

6. See that each community referendum committee is provided with a suitable ballot box in which to place the ballots cast in the referendum.

7. See that 41–Tob–2 has been prepared in accordance with the instructions herein, to show the persons eligible to vote in the referendum in each community.

8. Deliver the original of 41–Tob–2 and a supply of 41–Tob–4 and 5 to the chairman of the community referendum committee. Retain 41–Tob–2a in the county office.

9. See to it that the community referendum committees understand their duties as to (a) issuing ballot forms, (b) recording and challenging votes, (c) tabulating ballots, and (d) certifying results of the referendum in the community.

10. Notify the State committee by telephone, telegraph, or in person, as soon as possible after the closing of the polls, as to the preliminary count of the votes on each question in the county.

11. Meet not later than two days after the date of the referendum for the purpose of receiving and summarizing on 41–Tob–6 the data contained on 41–Tob–5. Such meeting shall be open to the public.

12. Prepare and certify in quadruplicate 41–Tob–6, showing the results in the county, forward the original and one copy to the State agricultural conservation committee (hereinafter referred to as the State committee) not later than fourteen calendar days after the date of the referendum, keep one copy posted for sixty days in a conspicuous place accessible to the public in or near the office of the county committee (hereinafter referred to as the county office) and file one copy permanently in the county office, where it shall be open to public inspection.

13. Make an investigation in each case of controversy or dispute regarding the eligibility of a voter. In each case where a ballot is marked "Challenged" by the community referendum committee, the eligibility of such person shall first be determined. If it is determined that such person is eligible, the ballot shall be placed with the challenged ballot of every other person found to be eligible, and when all the challenged ballots shall have been passed upon by the committee those ballots found to be valid shall be tabulated in the county summary. If it is determined that such person is not eligible the ballot shall be preserved with other ballots, as provided in paragraph 15 of this section B.

14. Make an immediate investigation in each case of dispute regarding the correctness of the summary of the referendum in a community.

No dispute shall be investigated by the county committee unless it is brought to its attention within ten calendar days after the date on which the referendum in question was held. The county committee shall promptly decide the dispute and immediately report its findings to the State committee. All voted ballots, register forms, and community summary sheets involved in the dispute shall be mailed or delivered in person to the State office.

15. Seal the voted ballots, challenged ballots found ineligible, register sheets, and community summary sheets for the county in one or more envelopes or packages (marked "Flue-cured Tobacco Referendum 1941", followed by the name of the county) and place them under lock and key in a safe place under the custody of the secretary of the county agricultural conservation association for a period of sixty calendar days from the date of the referendum. If no notice to the contrary is received by the end of such time, the ballots shall be destroyed and the register and community summary sheets permanently filed in the county office, where they shall be open to public inspection.

C. INSTRUCTIONS TO COMMUNITY REFERENDUM COMMITTEES

Each community referendum committee designated by the county agricultural conservation committee shall:

1. Arrange, with the assistance of the county committee, for conducting the referendum.

2. Assist the county committee in giving adequate public notice of the time and place for casting ballots in advance of the date on which the referendum will be held.

3. Provide a place where each voter can prepare and cast a ballot in secret and without interference.

4. Provide ballot boxes. Any container so arranged that ballots cannot be seen and cannot be removed without breaking seals on the container will be suitable. If strip adhesive paper or similar seals are used, such seals should be signed or initialed so that breaking or replacing the seal will affect or destroy the identifying marks and show the seal has been tampered with.

5. Open the polls not later than 9:00 o'clock A. M., local standard time, on the date fixed for the referendum.

6. Hold the referendum in a fair and unbiased manner.

7. Initial the ballot and also the registration list (41–Tob–2) opposite the name of the voter prior to issuance of the ballot to the voter. The initials of one committeeman will be sufficient but the committeeman who initials the ballot for a voter also should initial the registration list for such voter. If the eligibility of the voter is challenged, make entries on the ballot form as required in paragraph 9 prior to issuance of the ballot to the voter.

8. Instruct each voter, as he is handed a ballot form, to mark only one question on his ballot so as to show which way he votes, and then to fold the ballot and place it in the ballot box.

9. Issue a ballot to each person who claims to be eligible to vote and requests

a ballot, even though his eligibility is challenged by the committee. The committee shall challenge the eligibility of any person to vote:

(a) If his name was not recorded on the register of eligible voters (41–Tob–2) prior to the date of the referendum;

(b) If he is not engaged in production of flue-cured tobacco in 1940 in the community where the community referendum committee has jurisdiction over the polls, or if there is some indication beside his name that he should vote in another community; or

(c) If the committee is not certain that he has a bona-fide status as a farmer engaged in the production of flue-cured tobacco in 1940.

In every case where the eligibility of any person to vote is challenged, the community referendum committee shall, prior to the issuance of the ballot to such person, write across the back of the ballot in large letters the word "Challenged" and underneath such word the following:

(a) The name of such person;

(b) The name or number or letter of the community in which such person claims to have produced flue-cured tobacco in 1940;

(c) The name of the operator of the farm on which such person claims to have produced flue-cured tobacco in 1940; and

(d) A concise statement of the reason for challenging the eligibility of such person to vote.

The committee shall provide each farmer whose ballot is challenged as provided above an envelope in which the farmer may seal the ballot before placing it in the ballot box.

10. For each farmer to whom a ballot form is issued but who is not already listed on 41–Tob–2 prior to the time the ballot is issued to him, record thereon the information required in columns A to D, inclusive, and enter in red pencil in the margin to the left of such person's name the letter "C".

11. Close the polls and discontinue acceptance of ballots at 5:00 o'clock P. M., local standard time, on the date of the referendum, or such later hour as is fixed by the State committee.

12. Immediately after closing the polls, open the ballot box and canvass the ballots cast, which canvass shall be kept open to the public.

13. Tabulate and record the results of the referendum on 41–Tob–5. The number of challenged ballots cast shall be entered on 41–Tob–5, in the space provided, and will not be shown as being either for or against the marketing quotas. A ballot shall be considered as a spoiled ballot if it is mutilated or marked in such a way that a determination cannot be made as to the particular question for which the ballot should be counted. The number of spoiled ballots shall be entered in the space provided on 41–Tob–5 and such ballots placed in an envelope marked "spoiled ballots" followed by the name of the community.

14. Determine the total number of ballots issued as shown by the entry on the registration list of the initials of committeemen who issued the ballots. The total number of ballots cast (including challenged, spoiled and invalid ballots) shall be determined. If any ballot was cast which was not initialed by a committeeman such ballot shall be marked "invalid" and included among the spoiled ballots as provided in paragraph 13 above.

15. Certify to the accuracy of the executed 41–Tob–2 and 41–Tob–5 by signing the spaces provided.

16. Notify the county committee by telephone, or in person, as soon as possible after the closing of the polls as to the preliminary count of the votes on each question in the community.

17. Seal the voted ballots (including those challenged), the spoiled ballots, the register sheets, and the community summary sheets in one or more envelopes appropriately identified by the designation of the community and deliver them to the county committee not later than two calendar days after the date of the referendum, with the unused ballots and other forms. The chairman of the community referendum committee shall be responsible for the safe delivery of such reports, ballots, and forms to the county committee.

18. Post an executed copy of 41–Tob–5, as soon as it is executed, at a conspicuous place at the polling place, so that it remains posted and accessible to the public for at least three calendar days after the date of the holding of the referendum.

D. INSTRUCTIONS TO STATE COMMITTEES

The State committee shall be in charge of and responsible for the conducting of the referendum in the State and shall—

1. Notify the applicable regional director by telegraph as to the preliminary count in the referendum in the State of votes for and votes against marketing quotas.

2. Summarize on 41–Tob–7 the information contained on 41–Tob–6 and mail two fully executed 41–Tob–7's to the applicable regional director not later than twenty calendar days after the date of the referendum. If one sheet proves insufficient for listing the information with respect to all counties in the State, additional sheets properly numbered and identified and securely attached to the first sheet may be used for continuation, in which case totals should be entered and signatures of at least three members of the State Committee subscribed only on the last sheet. One fully executed copy of 41–Tob–6 and 41–Tob–7 shall be permanently filed in the State office of the Agricultural Adjustment Administration where it shall be open to public inspection.

3. Complete the investigation of any report from any county regarding controversies, irregularities, or disputes over the correctness of summaries of the referendum not later than 15 calendar days after the date of the referendum, and promptly forward its findings in such cases to the applicable regional director.

E. RESULTS OF REFERENDUM

Final and official tabulation of the votes cast in the referendum will be made by the Agricultural Adjustment Administration and the results of the referendum announced by the Secretary of Agriculture. The reports on 41–Tob–7 and related papers shall be permanently filed with such tabulation and shall remain available for public inspection.

Each county committee is authorized to release to the public press and to other inquirers unofficial reports of the total votes on each question in the referendum in the county.

The State committee is authorized to release to the press and to other inquirers the unofficial results of the referendum for the respective State by counties as rapidly as the votes in the various counties are tabulated.

If the Administrator of the Agricultural Adjustment Administration or the Secretary of Agriculture deems it necessary, the report of any community referendum committee, county committee, or State committee shall be reexamined and checked by such persons or agencies as may be designated.

Done at Washington, D. C., this 24th day of June 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 40–2573; Filed, June 24, 1940; 11:10 a. m.]

Division of Marketing and Marketing Agreements.

DETERMINATION BY THE SECRETARY OF AGRICULTURE, APPROVED BY THE PRESIDENT OF THE UNITED STATES, WITH RESPECT TO THE ISSUANCE OF AN ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA

Whereas pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), the Secretary of Agriculture of the United States tentatively approved, on August 18, 1939, a marketing agreement and issued, effective September 1, 1939, an order, both of which regulate the handling of milk in the Chicago, Illinois, marketing area; and

Whereas, the Secretary, having reason to believe that amendments to said tentatively approved marketing agreement and to said order would tend to effectuate the declared policy of said act, gave, on the 14th day of March 1940, notice of a public hearing[1] which was held at Chi-

[1] 5 F.R. 1068.

cago, Illinois, on March 20, 21, 22, and 23, 1940, at which times and place all interested parties were afforded an opportunity to be heard on certain proposed amended provisions of the tentatively approved marketing agreement and of the order; and

Whereas, after such hearing, handlers of more than fifty percent of the volume of milk covered by such order, as amended, which is marketed within the Chicago, Illinois, marketing area, refused or failed to sign a marketing agreement, as amended, relating to the handling of milk in such marketing area, tentatively approved by the Secretary on May 22, 1940:

Now, therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby determines:

1. That the refusal or failure of said handlers to sign said tentatively approved marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act;

2. That the issuance of the proposed order, as amended, is the only practical means, pursuant to such policy, of advancing the interests of producers of milk which is produced for sale in said area; and

3. That the issuance of the proposed order, as amended, is approved or favored by over two-thirds of the producers who participated in a referendum conducted by the Secretary and who, during the month of February 1940, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in said area.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, has executed this determination in duplicate and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 18th day of June 1940.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

Approved:

FRANKLIN D ROOSEVELT
The President of the United States.

Dated, June 18, 1940.

[F. R. Doc. 40-2548; Filed, June 21, 1940; 11:52 a. m.]

Food and Drug Administration.

[Docket No. FDC-10-A]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE ON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR FRUIT PRESERVE (FRUIT JAM) FOODS

PRESIDING OFFICER'S SUGGESTED FINDINGS OF FACT AND SUGGESTED REGULATION

Upon the basis of the evidence received at the above-entitled hearing duly held pursuant to the notice issued by the Secretary on August 5, 1939, and published in the FEDERAL REGISTER August 11, 1939, the undersigned Presiding Officer suggests the following findings of fact and order, namely:

Finding 1

A preserve or jam is the viscous or semi-solid food obtained by concentrating a mixture of a fruit, or vegetable, and saccharine ingredients in which the fruit or vegetable ingredient, as the case may be, is not less than 45 parts and the saccharine ingredient not more than 55 parts by weight. (R., pp. 41–45, 49–51, 250–251, 286–287, 390, 491–494, 517–518, 607–608, 626, 637–638, 1322–1323; O.I.P. Ex. 12)

Finding 2

In commercial practice the terms "preserve" and "jam" when used to identify a food product, are sometimes distinguished on the basis of the character of the fruit ingredient in such food, the product containing the whole fruit or large pieces thereof being known as "preserve" and the product containing crushed or disintegrated fruit being called "jam", but such a distinction is not made uniformly nor is there a definite line of demarcation applicable to all fruits wherefore the terms are generally used synonymously. (R., pp. 45, 334–335)

Finding 3

The following is a list of fruits, each of which (except apple) or a combination of any two or more (including apple), may be used as the fruit ingredient in a preserve, namely: Apple, apricot, blackberry, black raspberry, blueberry, boysenberry, cherry, crabapple, cranberry, current (or red current), damson (or damson plum), dewberry, elderberry, fig, gooseberry, grape, grapefruit, greengage (or greengage plum), guava, huckleberry, loganberry, nectarine, orange, peach, pear, pineapple, plum (other than damson or greengage plum), quince, raspberry (or red raspberry), strawberry, tangerine, and youngberry. (R., pp. 41–42, 45, 609, 626)

Finding 4

The fruit used as the ingredient in the manufacture of fruit preserves is the clean, mature fruit which may be fresh, frozen or canned. (R., pp. 45, 251–252, 286–287, 444–445, 609, 626, 1322–1323, 1368)

Finding 5

Tomato, or yellow tomato, or rhubarb, is the vegetable ingredient used in a preserve made from a mixture of vegetable and sugar ingredients. (R., pp. 41, 626)

Finding 6

The weight of the fruit prepared for use as an ingredient in preserves is its net weight exclusive of all ingredients used in the canning or freezing of such fruits when canned or frozen fruits are used, and, when normal commercial practice requires removal of portions of such fruit in preparing it for such use, exclusive also of the weight of all portions normally removed and, when apricots, or cherries, or grapes, or nectarines, or peaches, or any of the varieties of plums are so used, exclusive also of the weight of the pits or seeds of such fruits whether removed or not. (R., pp. 80–84, 251–254, 431–433, 571–572, 607–609, 626, 1322–1323

Finding 7

Any one of the following may be used as the saccharine ingredient in a preserve, namely: (1) sugar; (2) invert sugar sirups containing not more than 0.3 percent ash by weight on a dry basis; (3) any combination of sugar and invert sugar sirup; (4) any combination of sugar, invert sugar sirups and corn sugar or dextrose, or a combination of any two or more thereof; (5) any combination of corn sirup, sugar, invert sugar sirup and dextrose in which the weight of each component is not less than one-tenth of the weight of the solids of such combination except that the weight of the corn sirup solids is not more than one-fourth the weight of the combination; (6) honey; and (7) any combination of honey, sugar, invert sugar sirup, or dextrose, in which the weight of the solids of each component is not less than one-tenth of the weight of the solids of such combination except that the weight of honey solids is not less than two-fifths of the weight of the solids of such combination. (R., pp. 51–54, 85–87, 142, 154–155, 161–162, 198–199, 259–260, 311–312, 316–320, 338–339, 460–465, 536–544, 556, 619, 635, 668–669, 670, 677–679, 804, 818–821, 830, 844–845, 928–933, 936, 995, 998, 1053–1054, 1202, 1469–1470)

Finding 8

The weight of a saccharine ingredient is the weight of the solids of such ingredient. (R., pp. 266, 433, 803)

Finding 9

The function of any saccharine ingredient in a preserve is to sweeten and preserve it and to contribute to its food value. (R., pp. 244, 338)

Finding 10

"Sugar" is the refined product in crystallized form obtained from sugar cane or sugar beet, chemically known as "sucrose." (R., pp. 51, 141–142, 184, 245, 255, 352, 402, 1052)

Finding 11

When sugar in solution is subjected to certain treatments with enzyme invertase or certain acids, the sucrose is wholly or partly converted into levulose and dextrose, a chemical reaction commonly described by chemists as the "inversion" of sugar. (R., pp. 52, 53, 219, 546, 1003, 1017, 1020–1021, 1030, 1117–1120, 1201, 1203, 1232, 1468–1470)

Finding 12

Sugar is partially inverted in the process of manufacture of a preserve. (R., p. 220)

Finding 13

An invert sugar sirup is a wholly or partially inverted, refined or partially refined sugar solution. (R., pp. 52–53, 220, 1000, 1001, 1016, 1117, 1200)

Finding 14

Invert sugar sirups used commercially, including those used as sugar ingredients in preserves, are manufactured from raw cane sugar by any one of three methods, namely: (1) by treatment of a sugar solution prepared from granulated sugar with the enzyme invertase; (2) by treatment of a sugar solution prepared from granulated sugar with an acid, usually hydrochloric or sulphuric, which is neutralized with sodium carbonate when the treatment is completed; and (3) by treating a sugar solution prepared from washed raw sugar with hydrochloric acid which is neutralized with sodium carbonate when the treatment is completed. (R., pp. 55, 155, 1000–1003, 1017, 1116–1118, 1122, 1125, 1202–1205, 1232, 1242, 1267–1270, 1471)

Finding 15

All sugars contain ash, that is, mineral substances which remain when the organic substances in sugar are burned. (R., pp. 52–53, 147, 306, 308, 891, 1004–1014, 1109, 1112, 1208)

Finding 16

The amount of ash contained in sugar depends, in part, on the climatic and soil conditions where the sugar cane or sugar beet is grown so that the ash content of refined granulated sugars may vary from about .01 percent to about .04 percent. (R., pp. 314, 1110–1114, 1120)

Finding 17

The ash content of invert sugar sirup is increased in the process of inversion by reason of the addition thereto of certain mineral matters contained in the water in which the sugar is dissolved and by reason of the presence of the mineral substance, usually common salt, resulting when the acid reagent is neutralized. (R., pp. 52, 53, 308, 314, 315, 1030, 1118–1119, 1127, 1236, 1370)

Finding 18

The ash content of invert sugar sirup is not a deleterious substance and, in itself, is not objectionable. (R., pp. 148, 306, 311, 314, 320–321, 687, 866–867, 891–892, 913, 986, 1109–1110, 1208–1211)

Finding 19

Subject to the variations in the quantity of ash present due to the causes stated, the quantity of ash present in sugar is indicative of the degree of refinement of such sugar. (R., pp. 307, 309, 1113–1114, 1126, 1131, 1381)

Finding 20

A sugar sirup of an abnormally high ash content has a characteristic flavor, odor and color which renders it unfit for use as a saccharine ingredient in preserves. (R., pp. 154–155, 309–310, 1131, 1380)

Finding 21

A properly refined invert sugar sirup containing not more than 0.3 percent ash is colorless, odorless and flavorless (other than sweetness). (R., pp. 161–162, 1000–1001, 1020, 1028, 1203, 1218–1228, 1234, 1237, 1469, 1376, 1378, 1381–1382)

Finding 22

"Corn sugar" is the refined product obtained by complete hydrolization of corn starch which is chemically known as "dextrose", a term also used commercially to identify that substance. (R., pp. 350, 857–858, 865, 922–924; O.I.P. Exs. 13, 14, 15, 16)

Finding 23

By reason of its low solubility, corn sugar or dextrose can only be used in combination with sugar as the saccharine ingredient in a preserve and for the same reason the quantity which may be so used is limited to an amount which will remain in solution. (R., pp. 198–199, 538, 691, 785, 793, 795, 817–818, 1054; O.I.P. Ex. 16)

Finding 24

"Corn syrup" is the product obtained by partial hydrolization of corn starch and is composed of the sugars dextrose and maltose and the non-sugar (or prosugar) substance dextrine. (R., pp. 205–206, 210–211, 856–857, 862–863, 885–888, 963; O.I.P. Ex. 16)

Finding 25

The dextrine in corn sirup is a non-sugar substance which has a characteristic taste and texture. (R., pp. 339, 342, 345, 347–348, 351, 541, 693, 804, 954–955, 987–989, 1075)

Finding 26

Corn sirup costs "much less" than sugar and dextrose and a preserve in which it is used in substantial quantities sells at "much lower" prices. (R., pp. 466, 541, 805, 1351–1352)

Finding 27

The amount of corn sirup used in a preserve (except in imitation preserves) as part of the saccharine ingredient is not in excess of one-fourth, by weight, of the total saccharine ingredient. (R., pp. 54, 86–88, 460–466, 763–767, 804, 933–937, 953–954)

Finding 28

When honey is used as part of the saccharine ingredient in a preserve, the weight of honey is not less than two-fifths the weight of such saccharine ingredient. (R., p. 86)

Finding 29

Honey imparts a characteristic honey flavor to such preserve. (R., pp. 55, 259, 339, 345, 348, 351)

Finding 30

One of the factors on the basis of which a product is identified as a preserve is its consistency. (R., pp. 27, 47, 481, 637–638)

Finding 31

The consistency of a finished preserve generally associated with that product, is obtained by concentrating, by application of heat, the mixture of its fruit and saccharine ingredients to a given point and such other optional ingredients as may be present, the degree of concentration, measurable by the percentage of soluble solids contained in such mixture, depending on the fruit ingredient used. (R., pp. 47–49, 61–64, 270–272, 290–292, 525)

Finding 32

When the preserve is prepared from a mixture of fruit and saccharine ingredients in which the fruit ingredient is blackberry, or black raspberry, or blueberry, or boysenberry, or cherry, or crabapple, or dewberry, or elderberry, or grape, or grapefruit, or greengage, or huckleberry, or loganberry, or orange, or pineapple, or raspberry, or strawberry, or tangerine, or a mixture of two or more of such fruits, or the vegetable rhubarb, or tomato, or yellow tomato, the concentration of such mixture of fruit, or vegetable, as the case may be, and saccharine ingredients is carried to a point where its soluble solids are not less than 68 percent by weight, and in the case of all other fruits named in *Finding 3* hereof or a combination thereof, or a combination of one or more of such fruits and one or more of the fruits named in this Finding, the concentration of such mixture is carried to a point where its soluble solids are not less than 65 percent by weight. (R., pp. 48, 61–64, 270–272, 290–292, 525, 609, 727–728, 959–960)

Finding 33

The soluble solids of a preserve can be determined by the method prescribed on page 230 under the heading "Soluble Solids in Fresh and Canned Fruits, Jams, Marmalades and Preserves—Tentative" in the publications entitled "*Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists*, Fourth Edition", a publication well known to and commonly used by food chemists, which method is generally accepted by food chemists as a proper method whereby the soluble solids of preserves may be determined and one by which they can be determined with a reasonable degree of accuracy. (R., pp. 269, 415–418, 435–436, 608–609, 626)

Finding 34

Pectin and acid, substances naturally present in all fruits, are the substances which give a preserve its jellying properties. (R., pp. 46, 48, 89–91, 125–126, 274–275, 356, 441–443, 478, 481–482)

Finding 35

Some fruits contain larger quantities of pectin and acid than others, and frequently the quantity of pectin and acid

varies in the same kind of fruit, such variances being due to several factors, including the degree of ripeness of the fruit, the season of the year when the fruit attained ripeness, the locality in which the fruit is grown, and others. (R., pp. 89–92, 125–127, 130, 274–275, 442–443, 448–453, 470–471)

Finding 36

Some pectin and acid are lost when a fruit is frozen. (R., pp. 50, 444–445)

Finding 37

A manufacturer of preserves cannot, by normal, good commercial practice, control the acidity and pectin content of fruits by selecting them on the basis of their degree of ripeness, or by purchasing all of such fruit during the same season in the same locality. (R., pp. 451–452, 470–471, 615–617, 631–635)

Finding 38

When a fruit ingredient in preserves contains less pectin, or acid, or both, than the quantities normally present in average fruits, a proper consistency of the finished product cannot be obtained. (R., pp. 50, 89–91, 441–443, 473, 633–634, 1330)

Finding 39

When the fruit ingredient in a preserve is deficient in pectin or acid, or both, naturally or by reason of any of the factors named, the desirable consistency and quality of the finished product is obtained by adding to such fruit or to the mixture of such fruit and saccharine ingredient a sufficient amount of pectin or acid, or both, to compensate for such deficiency. (R., pp. 46–49, 58, 89–93, 126, 274–275, 356, 441, 471–473, 478–481, 644, 1330)

Finding 40

The acid deficiency of a fruit ingredient is supplied by adding to the mixture of fruit and saccharine ingredient from which a preserve is prepared, small quantities of a vinegar, or lemon juice, or lime juice, or citric acid, or lactic acid, or malic acid, or tartaric acid. (R., pp. 57–58, 446, 532–533, 609, 626)

Finding 41

A consistency corresponding to the consistency of normal preserves can be obtained from a mixture of fruit and saccharine ingredients in which a substantial portion of the fruit has been replaced with water, by adding abnormal quantities of pectin and acid to such mixture of water and fruit and saccharine ingredients, a practice regarded as an abuse of the addition of pectin and acid. (R., pp. 610–614, 630–631, 712–717, 736–738)

Finding 42

When the quantity of the fruit, and the degree of concentration of any mixture of such fruit and saccharine ingredients from which a preserve is made, are fixed, any inducement for adding pectin or acid, or both, in quantities greater than is required to supply the natural deficiency of those substances, is eliminated. (R., pp. 130, 613)

Finding 43

When preserves are manufactured in large batches, the product may jell too quickly to permit proper filling of containers and in such cases good commercial practice requires that the rate of set be retarded, which is accomplished by adding not more than three ounces of sodium citrate or sodium potassium tartrate, or both (commonly called "buffer salts") to each one hundred pounds of the saccharine ingredient in such batch. (R., pp. 46, 58–60, 94–96, 276–278, 526–527)

Finding 44

Preserves may be, and sometimes are, manufactured from a mixture of fruit and saccharine ingredients in which the fruit ingredient consists of two, three, four or five fruits. (R., pp. 45, 106–111, 113–114, 278)

Finding 45

Apple is never used as the sole fruit ingredient in a preserve. (R., pp. 144, 521–522, 618–619, 628–629, 724–726)

Finding 46

Apple is a relatively inexpensive fruit and, when used as part of the fruit ingredient in a preserve with one or more other fruits, it is added as a "filler" to reduce the cost of the fruit ingredient in such preserve. (R., pp. 144, 521–523, 617–619, 628–629)

Finding 47

When the fruit ingredient of a preserve consists of two fruits, one of which is apple, the weight of the apple is not more than 50 percent of the weight of the total fruit ingredient. (R., pp. 521–523, 617–618, 620, 628–629, 724–726)

Finding 48

When the fruit ingredient of a preserve consists of two, three, four, or five fruits, neither of which is apple, the weight of neither fruit is less than one-fifth of the total weight of such fruit ingredient. (R., pp. 48, 64–77, 106–108, 273, 520–525, 618, 620–621, 626, 724–726)

Finding 49

When the fruit ingredient of a preserve consists of a mixture of fruits none of which is apple, the object in mixing fruits is not to lower the cost of production but to effect a desirable blend of the various flavors of such fruits. (R., pp. 520–522, 524–525, 626, 724–726)

Finding 50

The common and usual name of a fruit preserve is the common and usual name or names of the fruit or fruits, as the case may be, constituting the fruit ingredient of such preserve, appearing in the order of their predominance by weight in case of two or more fruits, preceded or followed by the term "preserve" or "jam." (R., pp. 45, 104–111, 113–114, 278–279, 282, 334–335, 620)

Finding 51

When the fruit ingredient of a fruit preserve consists of four or five fruits, its common and usual name is "mixed fruit preserve" or "mixed fruit jam," or the common and usual name of each of such fruits in the order of their predominance by weight, preceded or followed by the word "preserve" or "jam." (R., pp. 45, 112, 279, 336)

Finding 52

Housewives sometimes add spices to home-made preserves. (R., pp. 46, 55)

Finding 53

When a preserve is packed in large containers for sale to institutions, restaurants, hotels, etc., commonly called "pail products", the chemical, sodium benzoate, is sometimes added to such products as a preservative. (R., pp. 125, 231–233)

On the basis of the foregoing Findings of Fact, it is concluded that the following definition and standard of identity for fruit preserves should be promulgated, namely:

§ 29.000 *Preserves, jams—Identity; label statement of optional ingredients.* (a) The preserves or jams for which definitions and standards of identity are prescribed by this section are the viscous or semi-solid foods each of which is made from a mixture composed of not less than 45 parts by weight of one of the fruit ingredients specified in subsection (b) to each 55 parts by weight of one of the optional saccharine ingredients specified in subsection (d). Such mixture may also contain one or more of the following optional ingredients:

(1) Spice.

(2) A vinegar, lemon juice, lime juice, citric acid, lactic acid, malic acid, tartaric acid, or any combination of two or more of these, in a quantity which reasonably compensates for deficiency, if any, of the natural acidity of the fruit ingredient.

(3) Pectin, in a quantity which reasonably compensates for deficiency, if any, of the natural pectin content of the fruit ingredient.

(4) Sodium citrate, sodium potassium tartrate, or any combination of these, in a quantity the proportion of which is not more than 3 ounces avoirdupois to each 100 pounds of the saccharine ingredient used.

(5) Sodium benzoate or benzoic acid or any combination of these, in a quantity reasonably necessary as a preservative. Such mixture, with or without added water, is concentrated by heat to such point that the soluble solids content of the finished preserve is not less than 68 percent if the fruit ingredient is specified in group I of subsection (b), and not less than 65 percent if the fruit ingredient is specified in group II of subsection (b). The soluble solids content

is determined by the method prescribed in *"Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists,* Fourth Edition, page 320, under "Soluble Solids in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Tentative", except that no correction is made for water-insoluble solids.

(b) The fruit ingredients referred to in subsection (a) are the following mature, properly prepared fruits which are fresh, frozen, and/or canned:

Group I

Blackberry (other than dewberry).
Black raspberry.
Blueberry.
Boysenberry.
Cherry.
Crabapple.
Dewberry (other than boysenberry, loganberry, and youngberry).
Elderberry.
Grape.
Grapefruit.
Huckleberry.
Loganberry.
Orange.
Pineapple.
Raspberry, Red Raspberry.
Strawberry.
Tangerine.
Rhubarb.
Tomato.
Yellow Tomato.
Youngberry.

Any combination of two, three, four, or five of such fruits in which the weight of each is not less than one-fifth of the weight of the combination.

Group II

Apricot.
Cranberry.
Currant, Red Currant.
Damson, Damson Plum.
Fig.
Gooseberry.
Greengage, Greengage Plum.
Guava.
Nectarine.
Peach.
Pear.
Plum (other than greengage plum and damson plum).
Quince.

Any combination of two, three, four, or five of such fruits, or one or more of such fruits with one or more of the individual fruits specified in group I, in which the weight of each is not less than one-fifth of the weight of the combination. Any combination of apple and one, two, three, or four of the individual fruits specified in this group or group I, in which the weight of apple is not more than one-half, and the weight of each of the other fruits is not less than one-fifth, of the weight of the combination. In any combination of two, three, four, or five fruits, each such fruit is an optional ingredient. For the purposes of this section, the word "fruit" includes the vegetables specified in this subsection.

(c) Any requirement of this section with respect to the weight of any fruit, combination of fruits, or fruit ingredient means

(1) the weight of fruit exclusive of the weight of any sugar, water, or other substance added for any processing or packing or canning, or otherwise added to such fruit;

(2) in the case of fruit prepared by the removal, in whole or in part, of pits, seeds, skins, cores, or other parts, the weight of such fruit exclusive of the weight of all such substances removed therefrom; and

(3) in the cases of apricots, cherries, grapes, nectarines, peaches, and all varieties of plums, whether or not pits and seeds are removed therefrom, the weight of such fruit exclusive of the weight of such pits and seeds.

(d) The optional saccharine ingredients referred to in subsection (a) are

(1) Sugar.
(2) Invert sugar sirup.
(3) Honey.
(4) Any combination of two or more of optional saccharine ingredients (1), (2), and (3), or one or more of such ingredients with dextrose and/or corn sirup; but in any such combination containing corn sirup, the weight of the solids of the corn sirup is not more than one-fourth of the weight of the solids of the combination.

(e) For the purposes of this section

(1) The weight of any optional saccharine ingredient means the weight of the solids of such ingredient.

(2) The term "sugar" means refined sugar (sucrose).

(3) The term "invert sugar sirup" means a sirup made by inverting or partly inverting sugar or partly refined sugar; its ash content is not more than 0.3 percent of its solids content, but if it is made from partly refined sugar, color and flavor other than sweetness are removed.

(4) The term "corn sugar" means refined anhydrous or hydrated dextrose made from corn.

(5) The term "dextrose" means refined anhydrous or hydrated dextrose.

(f) The name of each preserve or jam for which a definition and standard of identity is prescribed by this section is as follows:

(1) If the fruit ingredient is a single fruit, the name is "Preserve" or "Jam", preceded or followed by the name or synonym whereby such fruit is designated in subsection (b).

(2) If the fruit ingredient is a combination of two, three, four, or five fruits, the name is "Preserve" or "Jam", preceded or followed by the words "Mixed Fruit" or by the names or synonyms whereby such fruits are designated in subsection (b), in the order of predominance, if any, of the weights of such fruits in the combination.

(g) (1) When optional ingredient (1) is used, the label shall bear the word "Spiced" or the statement "Spice Added" or "With Added Spice"; but in lieu of the word "Spice" in such statements the common name of the spice may be used.

(2) When optional ingredient (5) is used, the label shall bear the words "Sodium Benzoate" or "Benzoic Acid" or "Sodium Benzoate and Benzoic Acid", as the case may be, followed by the words "Added as Preservative".

(3) When the fruit ingredient is a combination of two, three, four, or five fruits and the preserve is designated on its label by the name "Preserve" or "Jam" preceded or followed by the words "Mixed Fruit", the label shall bear the names or synonyms whereby such fruits are designated in subsection (b), in the order of predominance, if any, of the weights of such fruits in the combination.

(4) Wherever the name specified in subsection (f) appears on the label of the preserve so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the varietal name of the fruit used in preparing such preserve may so intervene.

It is further concluded that such definition and standard of identity for fruit preserves is reasonable and will promote honesty and fair dealings in the interest of the consumer. Wherefore, the Presiding Officer suggests that such standard be promulgated by the Secretary as herein proposed.

Any interested person may submit written objections to the foregoing suggested findings of fact and suggested order by filing them, in quintuplicate, with the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C., within 10 days from the date of receipt of a copy of the FEDERAL REGISTER in which this report is published.

Respectfully submitted.

[SEAL] MICHAEL F. MARKEL,
Presiding Officer.

Dated, June 20, 1940.

[F. R. Doc. 40-2562; Filed, June 22, 1940; 12:40 p. m.]

[Docket No. FDC-10-B]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE ON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR FRUIT JELLY FOODS

PRESIDING OFFICER'S SUGGESTED FINDINGS OF FACT AND SUGGESTED REGULATION

Upon the basis of the evidence received at the above-entitled hearing duly held pursuant to the notice issued by the Secretary on August 5, 1939, and published in the FEDERAL REGISTER August 11, 1939, the undersigned Presiding Officer suggests the following findings of fact and order, namely:

Finding 1

A jelly is the semi-solid food of gelatinous consistency obtained by concentrating, by the application of heat, a mixture of fruit juice, or diluted or concentrated fruit juice, and saccharine ingredients in which the fruit juice is not less than 45 parts, by weight, and the saccharine ingredient not more than 55 parts, by weight. (R., pp. 41–44, 69–70, 76, 147–B, 148, 151, 160–161, 184, 197–201, 259, 379, 412–413, 423, 578, 655–656, 679–680, 704–705)

Finding 2

Such a mixture of fruit juice and saccharine ingredients may also contain one or more of the following optional ingredients:

(1) Spice;

(2) A vinegar, lemon juice, lime juice, citric acid, lactic acid, malic acid, tartaric acid, or any combination of two or more of these in a quantity which reasonably compensates for the deficiency, if any, for the purpose of jelly-making, in the natural acidity of the fruit juice ingredient;

(3) Pectin, in a quantity which reasonably compensates for the deficiency, if any, for the purpose of jelly-making, in the natural pectin content of the fruit juice ingredient;

(4) Sodium citrate, sodium potassium tartrate, or any combination of these, in a quantity the proportion of which is not more than 3 ounces avoirdupois to each 100 pounds of the saccharine ingredient;

(5) Sodium benzoate or benzoic acid, or any combination of these, in a quantity reasonably necessary as a preservative; and

(6) Mint flavoring and harmless artificial green coloring, when the fruit juice ingredient contains the juice extracted from apple, crabapple, pineapple, or a mixture of two or all of such juices. (R., pp. 40–41, 150, 156–157, 198, 212–214, 231–232, 234–235, 254, 264, 413, 437, 440, 580–582, 602–604, 636–638, 692, 700–701, 711)

Finding 3

The fruit juice ingredient in a jelly is the filtered or strained liquid extracted, from fresh, frozen, or canned fruits, with or without the application of heat and with or without added water. (R., pp. 27–32, 44, 76, 147–147–A, 163, 197, 202, 413–414, 421, 569–572)

Finding 4

Sometimes a mixture containing two or more fruit juices, each in substantial quantity, is used as the fruit juice ingredient of a jelly. (R., pp. 32–33, 37, 67, 75–76, 147–147–A, 198, 420. 574–577. 656–657)

Finding 5

Sometimes the fruit juice ingredient prepared for use in making jelly contains added water. (R., pp. 197, 202, 238, 258, 413–414, 421)

Finding 6

When the fruit juice prepared for use as the fruit juice ingredient is required to be shipped or stored for future use, it is good commercial practice to concentrate such fruit juice by application of heat. It may also be concentrated by freezing. (R., pp. 42–43, 76, 160–164, 259, 379, 413, 569–572)

Finding 7

In any solution prepared for use as the fruit juice ingredient in a jelly, whether concentrated, unconcentrated or diluted, the weight of the fruit juice contained in such solution is to the weight of the solution, as the percentage of the soluble fruit solids, by weight, contained in such solution is to the percentage of the soluble fruit solids, by weight, contained in such fruit juice. (R., pp. 28–29, 76, 147–147–B, 238–239, 415–416, 421–422, 567)

Finding 8

In computing the weight of fruit juice for the purpose of jelly making, it is customary to consider, and reasonably accurate results are obtained by considering the percentage of soluble fruit solids in any given kind of fruit to be the average percentage of soluble fruit solids of the juice of that fruit. (R., pp. 202–206, 421–422, 560, 566–569)

Finding 9

The following is a convenient and reasonably accurate mathematical device for determining the weight of a fruit juice ingredient, which is based on Findings 7 and 8 and which includes as a factor the reciprocal of the average percentage of soluble fruit solids multiplied by 100 and, for convenience, rounded out at whole and half numbers, namely:

Determine the percent of soluble solids in the prepared fruit juice ingredient; multiply the percent so found by the weight of such prepared fruit juice ingredient; divide the result by 100; subtract from the quotient the weight of any added sugar or other added solids; and multiply the remainder by the factor for the fruit from which the fruit juice was obtained. The result is the weight of the actual fruit juice present in such prepared fruit juice ingredient. (R., pp. 28 147–147–B, 202–206, 421–422, 565–569, 650, 654–655)

Finding 10

The fruits from which the fruit juice ingredients of the jellies for which a standard of identity is proposed, are obtained; the percentage, by weight, of the average soluble fruit solids of such respective fruits; and their respective factors, being the reciprocals of such percentage multiplied by 100 and rounded out to whole or half numbers, are as follows:

Name of fruit	Average percentage of soluble fruit solids	Factor
Apple	13.7	7.5
Apricot	14.4	7.0
Blackberry	10.0	10.0
Black raspberry	11.2	9.0
Cherry	13.9	7.0
Crabapple	15.4	6.5
Cranberry	10.6	9.5
Currant (or red currant)	10.6	9.5
Damson (or Damson plumb)	14.8	7.0
Dewberry (other than loganberry and youngberry)	10.0	10.0
Fig	19.0	5.5
Gooseberry	8.2	12.0
Grape	14.1	7.0
Grapefruit	9.1	11.0
Greengage, Greengage Plum	14.8	7.0
Guava	7.6	13.0
Loganberry	10.6	9.5
Orange	12.7	8.0
Peach	11.8	8.5
Pineapple	14.6	7.0
Plum (other than Damson or Greengage and prune)	14.8	7.0
Pomegranate	17.6	5.5
Quince	13.2	7.5
Raspberry or red raspberry	10.5	9.5
Strawberry	8.0	12.5
Youngberry	10.0	10.0

(R., pp. 204–206; Gov. Ex. 2).

Finding 11

Any one of the following may be used as the saccharine ingredient in a jelly, namely, (1) sugar; (2) invert-sugar sirups containing not more than 0.30 percent ash by weight on dry basis and so refined as to remove color and flavor other than sweetness; (3) any combination of (1) and (2); (4) any combination of corn sugar or dextrose and (1), (2), or (3); (5) any combination of corn sirup and (1), (2), (3), or (4), in which the weight of corn sirup is not more than one-fourth of the weight of such combination; (6) honey; and (7) any combination of honey and (1), (2), or (3), in which the weight of honey is not less than two-fifths of the weight of the combination. (R., pp. 48–50, 57–58, 62–63, 72-D–72-E, 84–86, 93, 96, 102–103, 109, 117–120, 129, 141–143, 198, 207–212, 246, 322, 413, 424, 426, 427, 450, 601–602, 613, 615, 620, 644–645, 686, 702–703, 885–886, 809, 1041–1044, 1050–1052, 1100–1105, 1108, 1464–1465)

Finding 12

The weight of saccharine ingredient, whether alone or combined with other saccharine ingredients, is the weight of its solids. (R., pp. 84, 96–97, 102)

Finding 13

Sugar is the refined product in crystallized form obtained from sugar cane or sugar beet, which is chemically known as "sucrose." (R., pp. 207, 213, 884–885)

Finding 14

When sugar in solution is subjected to certain treatment with the enzyme invertase or with certain acids, such sugar is converted, wholly or partially, into levulose and dextrose. This chemical reaction is commonly described by chemists as the "inversion" of sugar. (R., pp. 207, 617, 777, 791, 794–795, 804, 809–810, 839, 947–948, 1463–1465)

Finding 15

An invert sugar sirup is wholly or partially inverted sugar solution. (R., pp. 207, 774–775, 777, 790, 807, 809–810, 948)

Finding 16

Invert sugar sirups used commercially, including those used as sugar ingredients in jellies, are manufactured by any one of the three methods, (1) by treatment of a sugar solution prepared from granulated sugar with the enzyme invertase; (2) by treatment of a sugar solution prepared from granulated sugar with an acid, usually hydrochloric or sulphuric, which is neutralized with sodium carbonate when the treatment is completed; and (3) by treating a solution of raw sugar or partly refined sugar with hydrochloric acid, which is neutralized with sodium carbonate when the treatment is completed, or by treating the solution with invertase and by removing color and flavor, other than sweetness, from such solution. (R., pp. 774–777, 791, 809–812, 839, 849, 947–949, 953, 956, 1463–1466)

Finding 17

All commercially produced sugars contain ash, that is, the mineral substances which remain when the organic substances of sugar are burned. (R., pp. 778–788, 815, 940, 943, 1026–1027)

Finding 18

The amount of ash contained in sugar depends, in part, on the climatic and soil conditions where the sugar cane or sugar beet is grown, so that the ash content of refined granulated sugar may vary from less than .01 percent to about .04 percent. (R., pp. 941–945, 951)

Finding 19

The ash content of invert sugar sirup is increased in the process of inversion by reason of the addition thereto of certain mineral matters contained in the water in which sugar is dissolved, and when the inverting reagent is an acid, by reason of the presence of the mineral substance, usually salt, resulting when such acid is neutralized. (R., pp. 207, 804, 843, 949–950, 958)

Finding 20

The ash content of invert sugar sirup is not a deleterious substance and, in itself, is not objectionable. (R., pp. 815–818, 940–941, 1001–1002, 1026–1027, 1059–1060, 1092, 1158)

Finding 21

Subject to the variation in the quantity of ash present, due to the causes stated in Findings 19 and 20, the quantity of ash present in invert sugar sirup is indicative of the degree of refinement. (R., pp. 315, 944–945, 957, 962)

Finding 22

An invert sugar sirup of a high ash content has a characteristic flavor, odor and color which renders it unsuitable for use as a sweetening ingredient in jellies. (R., p. 315)

Finding 23

An invert sugar sirup which has been properly refined for use in making jelly contains not more than 0.3 percent ash. (R., pp. 774–775, 794, 802, 810, 825–835, 841, 844, 1464)

Finding 24

Corn sugar is the refined product obtained by complete hydrolysis of corn starch. It is chemically and commercially also known as "dextrose". It may be anhydrous or hydrated. (R., pp. 991–992, 999; O.I.P. Exs. 2, 11, 12, 24)

Finding 25

Corn sirup is the product obtained by partial hydrolysis of corn starch, which is a concentrated aqueous solution of dextrose, maltose and dextrin, the dextrin, constituting about one-third of the weight of a high conversion corn sirup, being the non-sugar or pro-sugar substance which gives the corn sirup a characteristic taste and texture. (R., pp. 102–103, 906, 990–991, 996–997, 1020–1021, 1065–1066, 1126–1127, 1135, 1159–1161)

Finding 26

The dextrin in corn sirup is a non-sugar substance which has a characteristic taste and texture. (R., pp. 103, 906, 1065–1066, 1126–1127, 1159–1161)

Finding 27

A saccharine ingredient containing corn sirup in a quantity more than one-fourth of the weight of such ingredient is unsuitable for use in making jellies other than imitation jellies. (R., pp. 72–D–72–H, 103, 644–645, 1105–1109, 1125–1126)

Finding 28

Corn sirup costs "much less" than sugar or dextrose, and jellies in which it is used as a substantial part of the saccharine ingredient sell at "much lower" prices. (R., pp. 104, 647, 1171–1172)

Finding 29

When honey is used as part of the saccharine ingredient in combination with other saccharine ingredients, it is used in a sufficient quantity so that the characteristic honey flavor will carry through. Two-fifths, by weight, of the total weight of the saccharine ingredient is regarded as a reasonable minimum. (R., p. 229)

Finding 30

One of the factors on the basis of which a product is identified as a jelly is consistency. (R., pp. 31, 197, 199, 399, 413)

Finding 31

An important factor in obtaining the consistency generally expected of jelly is the concentration by heat of the mixture of fruit juice and saccharine ingredients to a point where its soluble solids are not less than 65 percent by weight. (R., pp. 31–32, 76, 147–147–B, 148–149, 199, 397, 436, 573–574)

Finding 32

The soluble solids in a jelly and in fruit juice are determined by the method prescribed in *"Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists"*, Fourth Edition, page 464, under "By means of a refractometer—Official", a method well known to chemists and reasonably accurate. (R., pp. 28, 76, 226–227, 416–418, 565–566)

Finding 33

Pectin and acid, substances naturally present in all fruit juices, are essential to the jellying of jelly. (R., pp. 40–41, 149, 155–156, 231, 278–279, 636–637, 678–680, 692, 700–701, 711, 1288–A–27)

Finding 34

Some fruit juices contain larger quantities of pectin and acid than others and frequently the quantity of pectin and acid varies in the same kind of fruit, such variances being due to several factors, including the degree of ripeness of the fruit from which the juice was obtained, the season of the year when such fruit attained ripeness, the locality in which such fruit was grown, the method of extraction and storage of the juice, and others. (R., pp. 40–41, 76, 150–151, 177, 198, 231–234, 278–279, 413, 680–683, 711)

Finding 35

A manufacturer of jellies cannot by normally good commercial practice control the acid and pectin content of fruit juices by selecting them on the basis of their degree of ripeness or by purchasing all of such fruits during the same season in the same locality. (R., pp. 680–683, 699)

Finding 36

When a fruit juice used as an ingredient in a jelly is deficient in pectin or acid,

or both, naturally or by reason of any of the factors named, the desirable consistency and quality of the finished product is obtained only by adding thereto a sufficient amount of pectin or acid, or both, to compensate for such deficiency. (R., pp. 40–41, 76, 149–150, 156–157, 193, 231–232, 234, 413, 636–638, 692, 700–701, 711)

Finding 37

An acid deficiency in a fruit juice may be supplied by adding thereto small quantities of a vinegar, or lemon juice, or lime juice, or citric acid, or lactic acid, or malic acid, or tartaric acid. (R., pp. 58, 89, 93, 149, 213, 580–582, 602–603)

Finding 38

A consistency corresponding to the consistency of a normal jelly can be obtained from a mixture of fruit juice and saccharine ingredients in which a substantial portion of the fruit juice has been replaced with water, by adding abnormal quantities of pectin and acid to such mixture of water, fruit juice and saccharine ingredient, a practice regarded as an abuse of the addition of pectin and acid. (R., pp. 678–680, 692)

Finding 39

When the quantity of the fruit juice in a jelly and the degree of concentration of such jelly are fixed, the inducement for adding these substances in abnormal quantities is eliminated. (R., pp. 437, 679–680)

Finding 40

When jelly is manufactured in large batches, the finished product sometimes jells too quickly to permit the escape of bubbles and the proper filling of containers, and in such cases the rate of set is regulated by adding to the mixture of fruit juice and saccharine ingredients not more than 3 ounces to each 100 pounds of the saccharine ingredient of sodium citrate or sodium potassium tartrate, or both—substances commonly called "buffer salts." (R., pp. 46, 58, 60, 198, 213–214, 234–235, 603–604)

Finding 41

The common and usual name of a jelly made from a single fruit is the word "jelly" preceded or followed by the name of the fruit from which the fruit juice ingredient of such jelly was extracted. (R., pp. 170–171, 242–243, 438, 478)

Finding 42

When the fruit juice ingredient of a jelly consists of two, three, four or five kinds of fruit juices, its common and usual name is "mixed fruit jelly", or the term "jelly" preceded or followed by the common and usual name of each of the respective fruits from which such juices were extracted, appearing in the order of the predominance by weight of such juices in such jelly. (R., pp. 222–223, 242–245, 445, 478–479, 577)

Finding 43

When the fruit juice ingredient of a jelly consists of two or more fruit juices, the weight of each fruit juice is not less than one-fifth of the total weight of such fruit ingredient. (R., pp. 33, 199–200, 222–226, 574–577, 656–657)

CONCLUSION

On the basis of the foregoing findings of fact, it is concluded that the following definition and standard of identity for fruit jellies should be promulgated, namely:

§ 29.500 *Fruit jelly—Identity; label statement of optional ingredients.* (a) The jellies for which definitions and standards of identity are prescribed by this section are the jelled foods each of which is made from a mixture composed of not less than 45 parts by weight (as determined by the method prescribed in subsection (b)) of one or any combination of two, three, four, or five of the fruit juice ingredients specified in subsection (c) to each 55 parts by weight of one of the optional saccharine ingredients specified in subsection (d). Such mixture may also contain one or more of the following optional ingredients:

(1) Spice.

(2) A vinegar, lemon juice, lime juice, citric acid, lactic acid, malic acid, tartaric acid, or any combination of two or more of these, in a quantity which reasonably compensates for deficiency, if any, of the natural acidity of the fruit juice ingredient.

(3) Pectin, in a quantity which reasonably compensates for deficiency, if any, of the natural pectin content of the fruit juice ingredient.

(4) Sodium citrate, sodium potassium tartrate, or any combination of these, in a quantity the proportion of which is not more than 3 ounces avoirdupois to each 100 pounds of the saccharine ingredient used.

(5) Sodium benzoate or benzoic acid, or any combination of these, in a quantity reasonably necessary as a preservative.

(6) Mint flavoring and harmless artificial green coloring, in case the fruit juice ingredient is extracted from apple, crabapple, pineapple, or two or all of these. Such mixture is concentrated by heat to such point that the soluble solids content of the finished jelly is not less than 65 percent, as determined by the method prescribed in "*Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists*", Fourth Edition, page 464 under "By means of a refractometer—Official."

(b) Any requirement of this section with respect to the weight of any fruit juice ingredient, whether concentrated, unconcentrated, or diluted, means the weight determined by the following method: Determine the percent of soluble solids in such fruit juice ingredient by the method for soluble solids referred to in subsection (a); multiply the percent so found by the weight of such fruit juice ingredient; divide the result by 100; subtract from the quotient the weight of any added sugar or other added solids; and multiply the remainder by the factor for such fruit juice ingredient prescribed in subsection (c). The result is the weight of the fruit juice ingredient.

(c) Each of the fruit juice ingredients referred to in subsection (a) is the filtered or strained liquid extracted with or without the application of heat and with or without the addition of water, from one of the following mature, properly prepared fruits which are fresh, frozen and/or canned:

Name of Fruit:	*Factor referred to in subsection* (b)
Apple	7.5
Apricot	7.0
Blackberry (other than dewberry)	10.0
Black Raspberry	9.0
Cherry	7.0
Crabapple	6.5
Cranberry	9.5
Currant, Red Currant	9.5
Damson, Damson Plum	7.0
Dewberry (other than loganberry and youngberry)	10.0
Fig	5.5
Gooseberry	12.0
Grape	7.0
Grapefruit	11.0
Greengage, Greengage Plum	7.0
Guava	13.0
Loganberry	9.5
Orange	8.0
Peach	8.5
Pineapple	7.0
Plum (other than damson, greengage, and prune)	7.0
Pomegranate	5.5
Quince	7.5
Raspberry, Red Raspberry	9.5
Strawberry	12.5
Youngberry	10.0

In any combination of two, three, four, or five of such fruit juice ingredients the weight of each is not less than one-fifth of the weight of the combination. Each such fruit juice ingredient in any such combination is an optional ingredient.

(d) The optional saccharine ingredients referred to in subsection (a) are:

(1) Sugar.

(2) Invert sugar sirup.

(3) Honey.

(4) Any combination of two or more of optional saccharine ingredients (1), (2), and (3), or one or more of such ingredients with dextrose and/or corn sirup; but in any such combination containing corn sirup, the weight of the solids of the corn sirup is not more than one-fourth of the weight of the solids of the combination.

(e) For the purposes of this section:

(1) The weight of any optional saccharine ingredient means the weight of the solids of such ingredient.

(2) The term "sugar" means refined sugar (sucrose).

(3) The term "invert sugar sirup" means a sirup made by inverting or partly inverting sugar or partly refined

sugar; its ash content is not more than 0.3 percent of its solids content, but if it is made from partly refined sugar color and flavor other than sweetness are removed.

(4) The term "corn sugar" means refined anhydrous or hydrated dextrose made from corn.

(5) The term "dextrose" means refined anhydrous or hydrated dextrose.

(f) The name of each jelly for which a definition and standard of identity is prescribed by this section is as follows:

(1) If the fruit juice ingredient is extracted from a single fruit, the name is "Jelly" preceded or followed by the name or synonym whereby the fruit from which such fruit juice ingredient was extracted is designated in subsection (c).

(2) If the fruit juice ingredient is a combination extracted from two, three, four, or five fruits, the name is "Jelly" preceded or followed by the words "Mixed Fruit" or by the names or synonyms whereby the fruits from which the fruit juice ingredients were extracted are designated in subsection (c), in the order of predominance, if any, of the weights of such fruit juice ingredients in the combination.

(g) (1) When optional ingredient (1) is used, the label shall bear the word "Spiced" or the statement "Spice Added" or "With Added Spice"; but in lieu of the word "Spice" in such statements the common name of the spice may be used.

(2) When optional ingredient (5) is used, the label shall bear the words "Sodium Benzoate" or "Benzoic Acid" or "Sodium Benzoate and Benzoic Acid", as the case may be, followed by the words "Added as Preservative".

(3) When optional ingredient (6) is used, the label shall bear the statement "Flavoring and Artificial Coloring Added" or "With Added Flavoring and Artificial Coloring"; the word "Flavoring" in such statement may be preceded by the word "Mint".

(4) When a combination of two, three, four, or five fruit juice ingredients is used, and the jelly is designated on its label by the word "Jelly" preceded or followed by the words "Mixed Fruit", the label shall bear the names or synonyms whereby such fruits are designated in subsection (c), in the order of predominance, if any, of the weights of such fruit juice ingredients in the combination.

(5) Wherever the name specified in subsection (f) appears on the label of the jelly so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except that the varietal name of the fruit used in preparing such jelly may so intervene.

It is further concluded that such definition and standard of identity for fruit jellies is reasonable and will promote honesty and fair dealings in the interest of the consumer. Wherefore the Presiding Officer suggests that such standard be promulgated by the Secretary as herein proposed.

Any interested person may submit written objections to the foregoing suggested findings of fact and suggested order by filing them, in quintuplicate, with the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C., within 10 days from the date of receipt of a copy of the FEDERAL REGISTER in which this report is published.

Respectfully submitted.

[SEAL] MICHAEL F. MARKEL,
Presiding Officer.

Dated, June 20, 1940.

[F. R. Doc. 40-2563; Filed, June 22, 1940; 12:41 p. m.]

[Docket No. FDC-10-C]

IN THE MATTER OF THE PUBLIC HEARING FOR THE PURPOSE OF RECEIVING EVIDENCE ON THE BASIS OF WHICH REGULATIONS MAY BE PROMULGATED FIXING AND ESTABLISHING A DEFINITION AND STANDARD OF IDENTITY FOR FRUIT BUTTER FOODS

PRESIDING OFFICER'S SUGGESTED FINDINGS OF FACT AND SUGGESTED REGULATION

Upon the basis of the evidence received at the above-entitled hearing duly held pursuant to the notice issued by the Secretary on August 5, 1939, and published in the FEDERAL REGISTER August 11, 1939, the undersigned Presiding Officer suggests the following findings of fact and order, namely:

Finding 1

A fruit butter is the smooth, homogeneous, sweet food obtained by cooking a mixture of fruit and saccharine ingredients consisting of not less than 5 parts, by weight, of the fruit ingredient to 2 parts, by weight, of the saccharine ingredient. (R., pp. 112–113, 115, 126, 142–145, 285–286, 292, 440, 488)

Finding 2

The fruit ingredient in fruit butter for which standards of identity are proposed, is the fruit pulp, or a mixture of two or more kinds of such pulps, obtained by cooking and straining so as to remove skins, seeds, pits, and cores, of the following fruits which may be fresh, frozen, canned, and/or dried, namely: Apple, apricot, grape, peach, pear, plum, and quince. (R., pp. 29–30, 113, 115, 123–126, 285–286, 290, 435–436, 440–441)

Finding 3

The optional fruit ingredient "dried" fruit or "evaporated" fruit is a fruit from which the moisture has been evaporated by the application of heat at varying degrees of temperature, but not in excess of 160 degrees Fahrenheit, to a point where the moisture content of the finished product is reduced within a range varying from about 14 to about 22 percent, by weight, of the solids. In the case of apples the fruit is sliced before drying, which slices are so dried without the removal of peelings and cores and, when finished, are known to the trade and are marketed as "apple chops." (R., pp. 396, 419, 445, 477–479)

Finding 4

As a result of the drying of fruit there are driven off from it some portions of the volatile ester flavoring substances which are characteristic of fresh fruit and there are also other changes, generally referred to as oxidations, which contribute materially to the loss of flavor and which affect the flavors which remain, as well as astringent materials, tannins, and other related substances. Incidental to the removal of water from the fruit there also occur certain physical changes in the fruit. Such changes in the fruit continue progressively during storage, the degree of changes in storage depending on the amount of moisture removed from the fruit and the humidity of the storage room. (R., pp. 290–291, 396–402, 410, 412–414, 424)

Finding 5

In some cases the changes in the character of the fruit as a result of drying are organoleptically detectible in the finished fruit butter. (R., pp. 125–126, 290–291, 403, 410, 412, 424)

Finding 6

In the absence of any information to the contrary, consumers generally believe the fruit ingredient in fruit butter to have been prepared from fresh fruits. (R., pp. 127–129; 180–181; Gov't. Ex. 3)

Finding 7

Fruit pulp prepared for use as the fruit ingredient in fruit butter may be concentrated or unconcentrated, or it may contain added water. (R., pp. 116–118, 121, 123, 291)

Finding 8

In any fruit ingredient prepared for use as such in fruit butter, whether concentrated, unconcentrated or diluted, the weight of the actual fruit pulp contained in such prepared ingredient is to the weight of the prepared ingredient, as to the percentage of the soluble fruit solids, by weight, contained in such prepared ingredient is to the percentage of soluble fruit solids, by weight, of the fruit from which such prepared ingredient was obtained. (R., pp. 117–121)

Finding 9

In computing the weight of the fruit ingredient it is customary, and reasonably accurate results are obtained for the purpose of making fruit butter, to take as the percentage of the soluble fruit solids in a fruit pulp the predetermined average percentage of fruit solids of the fruit from which such pulp was

obtained. (R., pp. 117–121, 286–287, 435–436, 486; Gov't. Ex. 2)

Finding 10

The following is a convenient and reasonably accurate mathematical device for determining the weight of fruit pulp or fruit juice, which is based on Findings 4 and 5 and which includes as a factor the reciprocal of the average percentage of soluble fruit solids of the fruits from which such pulps or juices are obtained, multiplied by 100 and, for convenience, rounded out to whole or half numbers, namely:

Determine the percent of soluble solids in any prepared ingredient containing fruit pulp or fruit juice; multiply the percent so found by the weight of such ingredient; divide the result by 100; subtract from the quotient the weight of any added sugar or other added solids; and multiply the remainder by the factor referred to in this finding. The result is the weight of the actual fruit pulp or fruit juice, as the case may be, present in such prepared ingredient. (R., pp. 116–123, 291–292, 435–436, 486)

Finding 11

The fruits from which the fruit ingredient of the fruit butters for which a standard of identity is proposed, is obtained; the percentage, by weight, of the average soluble fruit solids of such respective fruits, and their respective factors, being the reciprocals of the average percentage of fruit solids of such fruits multiplied by 100 and rounded out to whole or half numbers, are as follows:

Name of fruit	Average percentage of soluble fruit solids	Factor
Apple	13.7	7.5
Apricot	14.4	7.0
Grape	14.1	7.0
Peach	11.8	8.5
Pear	15.5	6.5
Plum (other than prune)	14.8	7.0
Prune	14.8	7.0
Quince	13.2	7.5

(R., pp. 119–120; Gov't. Ex. 2)

Finding 12

In any combination of two, three, four, or five fruit ingredients, the weight of each is not less than one-fifth of the total weight of such combination. (R., pp. 113–114, 139–142)

Finding 13

Any of the following may be used as the saccharine ingredient in fruit butters, namely: (1) sugar; (2) invert sugar sirup; (3) brown sugar; (4) honey; (5) corn sirup; (6) any combination of two or more of the saccharine ingredients (1), (2), (3), (4), and (5), but if honey is one of the components of such mixture, the weight of its solids is not less than two-fifths of the weight of the solids of such combination; (7) any combination of corn sugar or dextrose and saccharine ingredients (1), (2), (3), (4), (5), or (6), but if honey is a component, the weight of its solids is not less than two-fifths of the weight of the solids of such mixture. (R., pp. 111, 114, 133–135, 292–294, 473–474, 492, 611–612, 619–620, 658, 725–727, 1033–1035, 1042–1044, 1099–1102, 1194–1199, 1202, 1259–1260)

Finding 14

The weight of the saccharine ingredient, whether alone or combined with other saccharine ingredients, is the weight of its solids. (R., p. 293)

Finding 15

Sugar is the refined product in crystallized form obtained from sugar cane or sugar beet, chemically known as "sucrose." (R., pp. 114, 724–725)

Finding 16

When sugar in solution is subjected to certain treatments with enzyme invertaste or with certain acids, such sugar is converted wholly or partially into levulose and dextrose. This chemical reaction is commonly described by chemists as the "inversion" of sugar. (R., pp. 610–612, 638, 641–642, 651, 657, 659, 688, 792–795)

Finding 17

An invert sugar sirup is a wholly or partially inverted sugar solution. (R., pp. 621–622, 637, 656, 792)

Finding 18

Invert sugar sirups used commercially, including those used as sugar ingredients in fruit butters, are manufactured by any one of the three methods: (1) by treatment of a sugar solution prepared from granulated sugar with the enzyme invertase; (2) by treatment of a sugar solution prepared from granulated sugar with an acid, usually hydrochloric or sulphuric, which is neutralized with sodium carbonate when the treatment is completed; and (3) by treating a solution of raw sugar or partly refined sugar with hydrochloric acid which is neutralized with sodium carbonate, or by treating the solution with invertase; and by removing color and flavor, other than sweetness, from such solution. (R., pp. 613, 621–624, 638, 658–661, 688, 698, 791–793, 797, 800)

Finding 19

All commercially produced sugars contain ash, that is, the mineral substances which remain when the organic substances of sugar are burned. (R., pp. 625–635, 664, 784, 786–787, 1158)

Finding 20

The amount of ash content in sugar depends, in part, on the climatic and soil conditions where the sugar cane or sugar beet is grown so that the ash content of the granulated sugar may vary from less than 0.01 percent to about 0.04 percent. (R., pp. 785–789–795)

Finding 21

The ash content of invert sugar sirup is increased in the process of inversion by reason of the addition thereto of certain mineral matters contained in the water in which the sugar is dissolved and, when the inverting reagent is an acid, by reason of the presence of the mineral substance, usually salt, resulting when such acid is neutralized. (R., pp. 692, 793–794, 802, 805)

Finding 22

The ash content of invert sugar sirup is not a deleterious substance and, in itself, is not objectionable. (R., pp. 664–667, 784–785, 1051–1052, 1135–1136, 1158–1159, 1180, 1251)

Finding 23

Subject to the variations and the quantity of ash present due to the causes stated in Findings 20 and 21, the quantity of ash present in invert sugar sirup is indicative of the degree of refinement. (R., pp. 788–789, 801, 806)

Finding 24

An invert sugar sirup which has been properly refined for use in making fruit butters contains not more than 0.3 percent of ash. (R., pp. 611, 621–622, 641, 649, 659, 674–684, 690, 693)

Finding 25

Corn sugar is the refined product obtained by complete hydrolysis of corn starch. It is chemically and commercially known as "dextrose". It may be anhydrous or hydrated. (R., pp. 1125–1126, 1133)

Finding 26

By reason of its low solubility, corn sugar or dextrose can be used only in combination with sugar as a saccharine ingredient in fruit butters and for the same reason the quantity which may be used is limited. (R., pp. 726–727, 1055, 1087, 1089, 1091, 1098–1099)

Finding 27

Corn sirup is the product obtained by partial hydrolysis of corn starch and is composed of dextrin, dextrose and levulose. (R., pp. 1123–1126, 1130–1131, 1153–1154, 1229)

Finding 28

The dextrin in corn sirup is a corn sugar substance which has a characteristic taste and texture. (R., pp. 744, 1057, 1220–1221, 1252–1254)

Finding 29

Corn sirup costs less than sugar or dextrose and products in which it is used sell at "much lower" prices. (R., pp. 1263–1265)

Finding 30

When honey is used as a saccharine ingredient in combination with other saccharine ingredients, it is used in a sufficient quantity so that the characteristic

flavor will carry through, and a quantity not less than two-fifths, by weight, of the total weight of such mixture, is regarded as reasonable. (R., pp. 151–152)

Finding 31

Honey and corn sirup contribute a characteristic flavor to fruit butters. (R., pp. 136, 295, 339–340, 461–462)

Finding 32

Sometimes fruit butter is prepared from a mixture of the fruit ingredient for such fruit butter and a fruit juice, the latter being used in lieu of the saccharine ingredient. (R., pp. 136, 153–154, 441–442)

Finding 33

When fruit juice is used in lieu of the saccharine ingredient in fruit butter, it is used in a quantity not less than one-half, by weight, of the weight of the fruit ingredient of such fruit butter. (R., pp. 136, 153–154)

Finding 34

The weight of fruit juice, when concentrated or diluted, is computed on the basis of its weight prior to concentration or dilution. (R., p. 436)

Finding 35

There may be added also to such mixture of fruit and saccharine ingredients or fruit and fruit juice ingredients, as the case may be, one or more of the following ingredients: (1) spice; (2) flavoring (other than artificial flavoring); (3) salt; (4) a vinegar, lemon juice, lime juice, citric acid, lactic acid, malic acid, tartaric acid, or any combination of two or more of these. (R., pp. 114–116, 286, 464–465, 510, 522)

Finding 36

One of the factors on the basis of which fruit butter is identified is its consistency. An important factor in obtaining the consistency generally expected of fruit butter is the concentration by cooking of the mixture of fruit and saccharine ingredients to a point where its soluble solids are not less than 43 percent by weight. (R., pp. 115, 138–139, 292, 437–438, 486–487, 504–506)

Finding 37

The soluble solids in fruit butter are determined by the method prescribed in *"Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists"*, Fourth Edition, page 320, under "Soluble Solids in Fresh and Canned Fruits, Jams, Marmalades and Preserves—Tentative", a method well known to chemists and reasonably accurate. (R., pp. 117–118, 287–289, 302, 436–437, 485–486, 504)

Finding 38

The common and usual name of a fruit butter, when the fruit ingredient is made from a single fruit, is the name "Butter" preceded by the common and usual name of the fruit from which such fruit ingredient was named. (R., pp. 158–160, 303, 332–333)

Finding 39

When the fruit ingredient in a fruit butter consists of a combination of fruit pulps made from two, three, four, or five fruits, the name of such fruit butter is "Butter" preceded by the words "Mixed Fruit" or by the common and usual name of each of the fruits from which such combination was named, in the order of the predominance, if any, of the weight of such fruit pulp in the combination. (R., pp. 158–160, 171, 333–334)

On the basis of the foregoing findings of fact, it is concluded that the following definitions and standards of identity for fruit butters should be promulgated, namely:

§ 30.000 *Fruit butter—identity; label statement of optional ingredients.* (a) The fruit butters for which definitions and standards of identity are prescribed by this section are the smooth, semi-solid foods each of which is made from a mixture composed of not less than five parts by weight (as determined by the method prescribed in subsection (b) (1)) of one or any combination of two, three, four, or five of the optional fruit ingredients specified in subsection (c) to each two parts by weight of one of the optional saccharine ingredients specified in subsection (d), except that the use of such saccharine ingredient is not required when optional ingredient (5) is used. Such mixture may be seasoned with one or more of the following optional ingredients:

(1) Spice.

(2) Flavoring (other than artificial flavoring).

(3) Salt.

(4) A vinegar, lemon juice, lime juice, citric acid, lactic acid, malic acid, tartaric acid, or any combination of two or more of these.

Such mixture may also contain the optional ingredient:

(5) Fruit juice or concentrated fruit juice in a quantity not less than one-half the weight of the optional fruit ingredient. Such mixture is concentrated by heat to such point that the soluble solids content of the finished fruit butter is not less than 43 percent as determined by the method prescribed in *"Official and Tentative Methods of Analysis of the Association of Official Agricultural Chemists"*, Fourth Edition, page 320, under "Soluble Solids in Fresh and Canned Fruits, Jams, Marmalades, and Preserves—Tentative", except that no correction is made for water insoluble solids.

(b) (1) Any requirement of this section with respect to the weight of any optional fruit ingredient, whether concentrated, unconcentrated, or diluted, means the weight determined by the following method:

Determine the percent of soluble solids in the optional fruit ingredient by the method prescribed for determining soluble solids in section (a); multiply the percent so found by the weight of such ingredient; divide the result by 100; subtract from the quotient the weight of any added sugar or any other added solids; and multiply the remainder by the factor for such ingredient prescribed in subsection (c). The result is the weight of the optional fruit ingredient.

(2) For the purposes of this section, the weight of fruit juice or concentrated fruit juice (optional ingredient (5)) from a fruit specified in subsection (c) is the weight of such juice as determined by the method prescribed in subsection (b) (1); the weight of concentrated juice from any other fruit is the original weight of the undiluted juice before it was concentrated.

(c) Each of the optional fruit ingredients referred to in subsection (a) is prepared by cooking one of the following fresh, frozen, canned, and/or dried (evaporated) mature fruits, with or without added water, and screening out skins, seeds, pits, and cores:

Name of fruit	*Factor referred to in subsection (b)*
Apple	7.5
Apricot	7.0
Grape	7.0
Peach	8.5
Pear	6.5
Plum (other than prune)	7.0
Prune	7.0
Quince	7.5

In any combination of two, three, four, or five fruit ingredients, the weight of each is not less than one-fifth of the weight of the combination.

(d) The optional saccharine ingredients referred to in subsection (a) are:

(1) Sugar.

(2) Invert sugar sirup.

(3) Brown sugar.

(4) Honey.

(5) Corn sirup.

(6) Any combination composed of two or more of optional saccharine ingredients (1), (2), (3), (4), and (5); or one or more of such ingredients with dextrose.

(e) For the purposes of this section:

(1) The weight of any optional saccharine ingredient means the weight of the solids of such ingredient.

(2) The term "sugar" means refined sugar (sucrose).

(3) The term "invert sugar sirup" means a sirup made by inverting or partly inverting sugar or partly refined sugar; its ash content is not more than 0.3 percent of its solids content, but if it is made from partly refined sugar, color and flavor other than sweetness are removed.

(4) The term "corn sugar" means refined anhydrous or hydrated dextrose made from corn.

(5) The term "dextrose" means refined anhydrous or hydrated dextrose.

(f) The name of each fruit butter for which a definition and standard of iden-

tity is prescribed by this section is as follows:

(1) If the fruit ingredient is made from a single fruit the name is "Butter" preceded by the name whereby such fruit is designated in subsection (c).

(2) If the fruit ingredient is a combination made from two, three, four or five fruits, the name is "Butter" preceded by the words "Mixed Fruit" or by the names whereby such fruits are designated in subsection (c) in the order of predominance, if any, of the weight of such fruit ingredients in the combination.

(g) (1) When optional ingredient (1) is used, the label shall bear the word "Spiced" or the statement "Spice Added" or "With Added Spice"; but in lieu of the word "Spice" in such statements in common name of the spice may be used.

(2) When optional ingredient (2) is used, the label shall bear the statement "Flavoring Added" or "With Added Flavoring"; the word "Flavoring" in such statements may be preceded by the common name of the kind of flavoring used.

(3) When optional ingredient (5) is used, the label shall bear the words "Prepared with _____ Juice", the blank to be filled in with the name of the fruit from which the juice is obtained; but if apple juice is used the word "Cider" may be used in lieu of "Apple Juice".

(4) When the optional fruit ingredient is prepared in whole or in part from dried fruit, the label shall bear the words "Prepared From" or "Prepared in Part From", as the case may be, followed by the word "Evaporated" or "Dried", followed by the name whereby such fruit is designated in subsection (c). When two or more such optional fruit ingredients are used, such names shall appear in the order of predominance, if any of the weight of such ingredients in the combination.

(5) When a combination of two, three, four, or five optional fruit ingredients is used, and the fruit butter is designated on its label by the name "Mixed Fruit Butter", the label shall bear the names whereby the fruits from which such ingredients are prepared are designated in subsection (c), in the order of predominance, if any, of the weights of such ingredients in the combination.

(6) The label statements required by paragraphs (1) and (2) of this subsection, may be combined, as for example, "Cinnamon Oil and Cloves Added". The label statements required by two or more of paragraphs (3), (4), and (5) of this subsection, may be combined, as for example, "Prepared with Cider, Apples, and Dried Prunes".

(7) Wherever the name specified in subsection (f) appears on the label of the fruit butter so conspicuously as to be easily seen under customary conditions of purchase, the words and statements herein specified showing the optional ingredients used shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter, except that the varietal name of the fruit used in preparing such fruit butter may so intervene.

It is further concluded that such definitions and standards of identity for fruit butters are reasonable and will promote honesty and fair dealings in the interest of the consumer. Wherefore the Presiding Officer suggests that such standards be promulgated by the Secretary as herein proposed.

Any interested person may submit written objections to the foregoing suggested findings of fact and suggested order by filing them, in quintuplicate, with the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C., within 10 days from the date of receipt of a copy of the FEDERAL REGISTER in which this report is published.

Respectfully submitted.

[SEAL] MICHAEL F. MARKEL,
Presiding Officer.

Dated, June 20, 1940.

[F. R. Doc. 40-2564; Filed, June 22, 1940; 12:40 p. m.]

Rural Electrification Administration.

[Administrative Order No. 472]

ALLOCATION OF FUNDS FOR LOANS

JUNE 13, 1940.

By virtue of the authority vested in me by the provisions of section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for a loan for the project and in the amount as set forth in the following schedule:

Project designation:	*Amount*
Virginia 0020G2 B. R. P	$25,000

[SEAL] HARRY SLATTERY,
Administrator.

[F. R. Doc. 40-2550; Filed, June 21, 1940; 11:52 a. m.]

DEPARTMENT OF LABOR.

Wage and Hour Division.

PRIMA FACIE DETERMINATION IN THE MATTER OF APPLICATION OF THE OREGON FEED DEALERS ASSOCIATION FOR THE EXEMPTION OF THE CLEANING AND PREPARING OF SPECIFIED GRASS, CLOVER AND OTHER FORAGE SEED CROPS IN CLEANING PLANTS ENGAGED PRIMARILY IN SUCH CLEANING AND PREPARING, FROM THE MAXIMUM HOURS PROVISIONS OF THE FAIR LABOR STANDARDS ACT OF 1938 AS A BRANCH OF AN INDUSTRY OF A SEASONAL NATURE

Whereas, application has been filed by the Oregon Feed Dealers Association, Portland, Oregon, for the exemption of the cleaning and preparing of specified grass, clover and other forage seed crops in cleaning plants primarily engaged in such cleaning and preparing, from the maximum hours provisions of the Fair Labor Standards Act of 1938 as a branch of an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Act and Part 526 as amended [1] of the Regulations issued thereunder, and

Whereas, it appears from said application and upon further investigation that:

(1) Perennial ryegrass, common ryegrass, Hungarian vetch, hairy vetch, chewings fescue, tall fescue, Austrian Winter Peas, bent grass and Ladino clover seed crops are customarily cleaned and prepared in cleaning plants which engage primarily in such cleaning and preparation; and

(2) The harvest of the earliest above seed crops begins early in July and they are cured and are threshed as soon as practicable thereafter; and

(3) Cleaning plants which are primarily engaged in cleaning and preparing the above seed crops receive them immediately after threshing and clean and prepare them immediately to avoid deterioration; and

(4) These cleaning plants customarily operate from early July to December 15, receiving, cleaning, and shipping from the plants 90 per cent of all seed within a four months' period; and

(5) That during the period from late December to early July, plants primarily engaged in the cleaning of the above seed crops, cease operations except for maintenance, repair and sales work, because owing to natural factors the seed crops to be cleaned are no longer available.

Now, therefore, upon consideration of the facts stated in the said application, and upon further investigation the Administrator hereby determines, pursuant to § 526.5 (c) of the Regulations, that a *prima facie* case has been shown for the granting of an exemption, pursuant to section 7 (b) (3) of the Fair Labor Standards Act of 1938 and Part 526 of the Regulations, to cleaning plants engaged primarily in the cleaning and preparing of perennial ryegrass, common ryegrass, Hungarian vetch, hairy vetch, chewings fescue, tall fescue, Austrian Winter Peas, bent grass and Ladino clover seed crops as an industry of a seasonal nature.

In the above, the term "cleaning plants primarily engaged in such cleaning and preparation", i. e., the cleaning and preparation of perennial ryegrass, common ryegrass, Hungarian vetch, hairy vetch, chewings fescue, tall fescue, Austrian Winter Peas, bent grass and Ladino clover seed crops is understood to include those cleaning plants in which the cleaning and preparing of such seed crops either individually or in combination make up 75 per cent of their cleaning and preparing operations.

In accordance with the procedure established by § 526.5 (c) of the Regulations, the Administrator for fifteen days following the publication of this deter-

[1] 5 F.R. 2269.

mination will receive objection to the granting of the exemption and request for hearing from any interested person. Upon receipt of objection and request for hearing, the Administrator will set the application for the hearing before himself or an authorized representative.

If no objection and request for hearing is received within fifteen days, the Administrator will make a finding upon the *prima facie* case shown upon the application.

These applications may be examined at Room 313, 939 D Street NW., Washington, D. C.

Signed at Washington, D. C., this 19th day of June 1940.

PHILIP B. FLEMING,
Administrator.

[F. R. Doc. 40-2570; Filed, June 24, 1940; 10:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION.

[Docket No. 5874]

IN RE APPLICATION OF GEORGE F. MEYER (NEW)

Dated, August 5, 1939, for construction permit; class of service, broadcast; class of station, broadcast; location, Medford, Wisconsin; operating assignment specified: Frequency, 1500 kc.; power, 100 w.; hours of operation, unlimited

[File No. B4-P-2501]

NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the legal, technical, financial and other qualifications of the applicant to construct and operate the proposed station.

2. To determine the nature and character of the program service which applicant may reasonably be expected to provide if authorized to construct and operate the proposed station.

3. To determine whether public interest, convenience or necessity will be served by the granting of this application.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of Section 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

George F. Meyer,
269 S. Third Street,
Medford, Wisconsin.

Dated at Washington, D. C., June 21, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40-2559; Filed, June 22, 1940; 10:46 a. m.]

[Docket No. 5883]

IN RE APPLICATION OF NORTH JERSEY BROADCASTING CO., INC. (NEW)

Dated, November 9, 1939, for construction permit; class of service, broadcast; class of station, broadcast; location, Paterson, New Jersey; operating assignment specified: Frequency, 900 kc.; power, 1 kw. day; hours of operation, daytime

[File No. B1-P-2624]

NOTICE OF HEARING

You are hereby notified that the Commission has examined the above described application and has designated the matter for hearing for the following reasons:

1. To determine the legal, financial, technical and other qualifications of the applicant to construct and operate the proposed station;

2. To determine whether the granting of the application will tend toward a fair, efficient and equitable distribution of radio service;

3. To determine the area and population which would receive interference-free primary service from the operation of the proposed station;

4. To determine whether the site on which the applicant proposes to construct and operate the station will be satisfactory;

5. To determine whether the operation of the proposed station will comply with the Rules and Regulations of the Commission and the Standards of Good Engineering Practice;

6. To determine whether the grant of this application would preclude the most efficient use of the frequency requested in this or other communities;

7. To determine whether Paterson, New Jersey has sufficient diversity of interests to require local facilities which would not render primary service to contiguous communities and the New York metropolitan district.

The application involved herein will not be granted by the Commission unless the issues listed above are determined in favor of the applicant on the basis of a record duly and properly made by means of a formal hearing.

The applicant is hereby given the opportunity to obtain a hearing on such issues by filing a written appearance in accordance with the provisions of § 1.382 (b) of the Commission's Rules of Practice and Procedure. Persons other than the applicant who desire to be heard must file a petition to intervene in accordance with the provisions of Section 1.102 of the Commission's Rules of Practice and Procedure.

The applicant's address is as follows:

North Jersey Broadcasting Co., Inc.,
% James V. Cosman,
104 W. Haledon Avenue,
Haledon, New Jersey.

Dated at Washington, D. C., June 21, 1940.

By the Commission.

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 40-2560; Filed, June 22, 1940; 10:46 a. m.]

FEDERAL POWER COMMISSION.

[Project No. 390]

IN THE MATTER OF SOUTHERN CALIFORNIA EDISON COMPANY LTD.

ORDER POSTPONING REHEARING

JUNE 21, 1940.

It appearing to the Commission that:

(a) By order dated May 3, 1940, it granted the petition of Southern California Edison Company Ltd., licensee for Project No. 390, for rehearing[1] with respect to certain provisions relating to annual charges in its March 12, 1940, order authorizing amendment of license upon application filed October 10, 1939, by licensee, such rehearing to begin at 10 a. m., on June 24, 1940, in the Hearing Room of the Commission at Washington, D. C.;

(b) On June 10, 1940, it received from Southern California Edison Company Ltd. a request to withdraw its application filed on October 10, 1939;

(c) Good cause exists for postponing such rehearing;

The Commission orders that:

The rehearing in this proceeding now set for June 24, 1940, be and it is hereby postponed until further order of the Commission.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-2556; Filed, June 22, 1940; 9:51 a. m.]

[Docket No. IT-5544]

IN THE MATTER OF OTTER TAIL POWER COMPANY

ORDER POSTPONING DATE FOR REHEARING

JUNE 21, 1940.

It appearing to the Commission that:

The Respondent, Otter Tail Power Company, has advised that it will file

[1] 5 F.R. 1648.

with the Commission, on or before July 1, 1940, a uniform rate schedule applicable to the wholesale customers involved in this proceeding, and has requested that the hearing upon Respondent's Petition for Rehearing [1] be postponed for 30 days from June 26, 1940;

The Commission orders that:

The rehearing upon the above matter set for Fergus Falls, Minnesota, on June 26, 1940, be and the same is hereby postponed to July 25, 1940, at 10 a. m., in the Council Chamber, City Hall, in the City of Fergus Falls, Minnesota.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 40-2557; Filed, June 22, 1940; 9:51 a. m.]

FEDERAL TRADE COMMISSION.

[Docket No. 4123]

IN THE MATTER OF EDWARD SHILL AND SANFORD C. CHESICK, INDIVIDUALLY TRADING AS THE CHESHILL MANUFACTURING COMPANY

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 19th day of June, A. D. 1940.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U.S.C.A., sec. 41).

It is ordered, That Lewis C. Russell, a Trial Examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, June 28, 1940, at nine o'clock in the forenoon of that day (eastern standard time) at the St. George Hotel, Brooklyn, New York.

Upon completion of testimony for the Federal Trade Commission, the Trial Examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The Trial Examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Secretary.

[F. R. Doc. 40-2551; Filed, June 21, 1940; 1:25 p. m.

[1] 5 F.R. 2126.

[File No. 21-353]

IN THE MATTER OF PROPOSED TRADE PRACTICE RULES FOR THE RESISTANCE WELDER MANUFACTURING INDUSTRY

NOTICE OF HEARING, AND OF OPPORTUNITY TO PRESENT VEIWS, SUGGESTIONS, OR OBJECTIONS

At a regular session of the Federal Trade Commission held at its office in the City of Washington, D. C., on the 22d day of June, A. D. 1940.

This matter now being before the Federal Trade Commission under its trade practice conference procedure, opportunity is hereby extended by the Commission to any and all persons, partnerships, corporations, associations, or other parties affected by or having an interest in the proposed trade practice rules for the Resistance Welder Manufacturing Industry to present to the Commission, orally or in writing, their views concerning such rules, including such pertinent information, suggestions, or objections, if any, as they desire to submit. For this purpose they may, upon application to the Commission, obtain copies of the proposed rules. Written communications of such matters should be filed with the Commission not later than July 12, 1940. Opportunity for oral hearing and presentation will be afforded at 10 a. m., July 12, 1940, in Room 332, Federal Trade Commission Building, Constitution Avenue at Sixth Street, Washington, D. C., to any such persons, partnerships, corporations, associations, or other parties as may desire to appear and be heard. After giving due consideration to all matters submitted concerning the proposed rules, the Commission will proceed to their final consideration.

By the Commission.

JOE L. EVINS,
Acting Secretary.

[F. R. Doc. 40-2571; Filed, June 24, 1940; 11:09 a. m.]

INTERSTATE COMMERCE COMMISSION.

[Ex Parte No. MC-2]

IN THE MATTER OF MAXIMUM HOURS OF SERVICE OF MOTOR CARRIER EMPLOYEES

[Ex Parte No. MC-3]

IN THE MATTER OF NEED FOR ESTABLISHING REASONABLE REQUIREMENTS TO PROMOTE SAFETY OF OPERATION OF MOTOR VEHICLES USED IN TRANSPORTING PROPERTY BY PRIVATE CARRIERS

NOTICE OF POSTPONEMENT OF HEARING

JUNE 20, 1940.

Because the Democratic National Convention is to be held in Chicago the week of July 15, and hotel space will not be available, the hearing in the above entitled proceedings is postponed from July 16 to July 23. The hearing will be held before Examiner R. W. Snow at the Hotel Sherman, Chicago, Illinois, beginning Tuesday, July 23, 1940, at 9 A. M. Standard Time.

By the Commission, Division 5.

[SEAL] W. P. BARTEL,
Secretary.

[F. R. Doc. 40-2568; Filed, June 24, 1940; 10:23 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

[File No. 59-5]

IN THE MATTER OF THE MIDDLE WEST CORPORATION AND ITS SUBSIDIARY COMPANIES, RESPONDENTS

ORDER DENYING APPLICATION FOR POSTPONEMENT OF HEARING DATE

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 20th day of June, A. D. 1940.

The Commission having issued a Notice of and Order for Hearing in the within matter, pursuant to section 11 (b) (1) of the Public Utility Holding Company Act of 1935; said Notice of and Order for Hearing having required that the respondents herein file with the Secretary of the Commission on or before the 9th day of April, 1940 their joint or several answers thereto, and having further ordered that a hearing on the issues set forth in said Notice of and Order for Hearing commence on the twentieth day after said date for filing answers; the Commission having extended the time for filing answers to the 9th day of May, 1940 and the time for commencement of said hearing to the 28th day of June, 1940, by order dated March 22nd, 1940; the Commission having further extended the date for filing answers to the 20th day of May, 1940 by order dated May 8, 1940; and the respondents having filed on June 20, 1940 their "Motion for Postponement of Beginning Date of Hearing" requesting further extension of the date for commencement of said hearing to July 29, 1940; and

The Commission having duly considered said Motion for Postponement of Beginning Date of Hearing and being of the opinion that the date for commencement of said hearing should not further be postponed;

It is ordered, That said Motion for Postponement of Beginning Date of Hearing be, and the same hereby is, denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2575; Filed, June 24, 1940; 11:15 a. m.]

[File No. 59-12]

IN THE MATTER OF ELECTRIC BOND AND SHARE COMPANY, AMERICAN POWER & LIGHT COMPANY, PACIFIC POWER & LIGHT COMPANY, ELECTRIC POWER & LIGHT CORPORATION, UTAH POWER & LIGHT COMPANY, NATIONAL POWER & LIGHT COMPANY, EBASCO SERVICES INCORPORATED, RESPONDENTS

ORDER GRANTING REQUEST TO INTERVENE OF THE STATE OF MAINE

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 20th day of June, A. D. 1940.

The State of Maine having filed a written request to intervene in the proceedings under section 11 (b) (2) of the Public Utility Holding Company Act of 1935 with respect to Electric Bond and Share Company, and the other respondents named in the within proceeding, and it appearing from said request that said State of Maine has an interest in the proceedings;

It is hereby ordered, That the said request of the State of Maine to intervene in said proceedings is granted, and said State of Maine is hereby admitted as a party in said proceedings.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-2574; Filed, June 24, 1940; 11:15 a. m.]

[File No. 70-17]

IN THE MATTER OF THE UNITED LIGHT AND POWER COMPANY, FORT DODGE GAS AND ELECTRIC COMPANY, PEOPLES LIGHT COMPANY, PEOPLES POWER COMPANY, PEOPLES LIGHT AND POWER COMPANY

ORDER APPROVING APPLICATIONS

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 20th day of June, A. D. 1940.

Peoples Power Company and Peoples Light and Power Company, subsidiaries of The United Light and Power Company, a registered holding company, having filed a joint application whereby Peoples Power Company and Peoples Light and Power Company seek exemption, pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, from the provisions of section 6 (a) of said Act of the issuance of notes aggregating $250,000; and Fort Dodge Gas and Electric Company and Peoples Light Company, also subsidiaries of The United Light and Power Company, having filed a joint declaration whereby Fort Dodge Gas and Electric Company and Peoples Light Company seek approval, pursuant to Section 7 of the Public Utility Holding Company Act of 1935, of the issuance of notes aggregating $100,000 by Fort Dodge Gas and Electric Company and notes aggregating $475,000 by Peoples Light Company; and The United Light and Power Company having filed its application pursuant to Section 10 in which it seeks approval under said section of said Act for the acquisition by it of all the afore-described notes;

A public hearing having been held upon said joint applications and declarations, as amended, after appropriate notice, the Commission having examined the record and entered its findings herein;

It is ordered, That the said applications be and they are hereby approved and that the said declarations be and they are hereby permitted to become effective forthwith with respect to the issuance of notes by Peoples Power Company, Peoples Light Company, and Fort Dodge Gas and Electric Company, and with respect to the acquisition of such notes by The United Light and Power Company (but not with respect to the issuance of notes by Peoples Light and Power Company or the acquisition thereof), subject, however, to the following conditions:

(1) That all acts in connection with said applications and declarations as amended shall be performed in all respects as set forth in and for the purposes represented by said applications and declarations as amended except that the declaration with respect to Fort Dodge Gas and Electric Company be carried out in accordance with the condition hereinafter set forth in sub-paragraph 3;

(2) That in the event the order of the Illinois Commerce Commission shall be revoked, rescinded or otherwise terminated, the exemption granted herein shall immediately terminate without further order of this Commission;

(3) That the interest rate on the Fort Dodge Gas and Electric Company notes proposed to be issued be fixed at 4% per annum; and

(4) That within ten days after the issuance of the notes referred to herein and the acquisition of such notes, the applicants and declarants shall, respectively, file with this Commission certificates of notification showing that such issuance and acquisition have been effected in accordance with the terms and conditions and for the purposes represented by said applications and declarations.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-2576; Filed, June 24, 1940; 11:15 a. m.]

[File No. 46-150]

IN THE MATTER OF TRUSTEES UNDER PENSION TRUST AGREEMENT, GENERAL UTILITY INVESTORS CORPORATION, ASSOCIATED POWER CORPORATION, NY PA NJ UTILITIES COMPANY, ASSOCIATED GAS AND ELECTRIC CORPORATION, ASSOCIATED GAS AND ELECTRIC COMPANY

ORDER CONSENTING TO WITHDRAWAL OF MOTION FOR MODIFICATION OF CONDITION IN COMMISSION'S ORDER

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of June, A. D. 1940.

The Commission having on June 29, 1939 issued its order in the above matter (Holding Company Act Release No. 1615) containing, among others, the following condition:

"(5) NY PA NJ Utilities Company * * * shall not reduce its open account indebtedness with Associated Utilities Corporation below $24,000,000;"

NY PA NJ Utilities Company, on October 6, 1939, having filed a motion for modification of the above condition so as to permit an additional reduction of not less than $3,000,000 of said open account indebtedness;

NY PA NJ Utilities Company, on June 10, 1940, having filed a request with this Commission for the withdrawal of said motion for modification of the above condition;

The Commission consents to the withdrawal of such motion, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 40-2581; Filed, June 24, 1940; 11:16 a. m.]

[File Nos. 46-184, 56-68]

IN THE MATTER OF CENTRAL U. S. UTILITIES COMPANY AND NY PA NJ UTILITIES COMPANY

ORDER CONSENTING TO WITHDRAWAL OF APPLICATIONS PURSUANT TO REQUEST OF APPLICANTS

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of June, A. D. 1940.

The above-name applicants having filed with the Commission a request for the withdrawal of the following applications:

Application pursuant to Section 10 (a) (1) of the Public Utility Holding Company Act of 1935 for approval of the acquisition by Central U. S. Utilities Company of 166,600 shares of common stock, par value $1.00, of Pennsylvania

Edison Company from NY PA NJ Utilities Company. File No. 46–184.

Application pursuant to Rule U-12D–1 promulgated under the Public Utility Holding Company Act of 1935 for approval of the sale by NY PA NJ Utilities Company to Central U. S. Utilities Company of 166,600 shares of common stock, par value $1.00, of Pennsylvania Edison Company. File No. 56–68.

The Commission consents to the withdrawal of such applications, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2578; Filed, June 24, 1940; 11:15 a. m.]

[File Nos. 46–185, 56–69]

IN THE MATTER OF CENTRAL U. S. UTILITIES COMPANY AND NY PA NJ UTILITIES COMPANY

ORDER CONSENTING TO WITHDRAWL OF APPLICATIONS PURSUANT TO REQUEST OF APPLICANTS

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of June, A. D. 1940.

The above-named applicants having filed with the Commission a request for the withdrawal of the following applications:

Application pursuant to Section 10 (a) (1) of the Public Utility Holding Company Act of 1935 for approval of the acquisition by Central U. S. Utilities Company of 115,000 shares of the common stock, par value $1.00, of Keystone Public Service Company from NY PA NJ Utilities Company. File No. 46–185.

Application pursuant to Rule U-12D–1 promulgated under the Public Utility Holding Company Act of 1935 for approval of the sale by NY PA NJ Utilities Company to Central U. S. Utilities Company of 115,000 shares of the common stock, par value $1.00, of Keystone Public Service Company. File No. 56–69.

The Commission consents to the withdrawal of such applications, and to that effect

It is so ordered.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2577; Filed, June 24, 1940; 11:15 a. m.]

[File No. 46–207]

IN THE MATTER OF KEYSTONE PUBLIC SERVICE COMPANY

AMENDATORY ORDER

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 21st day of June, A. D. 1940.

The Commission having on June 7, 1940 entered an order[1] in the above entitled proceeding granting approval of the application of Keystone Public Service Company filed pursuant to Section 10 (a) (1) of the Public Utility Holding Company Act of 1935, subject to certain conditions set forth in said order;

And it appearing that the first paragraph of said order omits certain words and contains certain incorrect words;

And it further appearing to the Commission that said errors are wholly clerical;

It is ordered, That said order be and it is hereby amended by striking therefrom the first paragraph and inserting in lieu thereof the following:

"Keystone Public Service Company, a public utility subsidiary of a registered holding company, having filed an application pursuant to section 10 (a) (1) of the Public Utility Holding Company Act of 1935, seeking approval of the acquisition of demand promissory notes in an aggregate face amount not to exceed $80,000, to be acquired from time to time from Citizens Transit Company, a wholly-owned subsidiary of applicant, said notes to bear interest at 6% per annum or ½ of 1% per annum more than the cost of the money to Keystone Public Service Company, whichever is the lesser amount; all such notes remaining unpaid on November 8, 1942 are to be repaid by the issuance of common stock by Citizens Transit Company or discharged by a capital donation by Keystone Public Service Company to Citizens Transit Company."

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2579; Filed, June 24, 1940; 11:16 a. m.]

[File No. 7–465]

IN THE MATTER OF CONTINENTAL ROLL & STEEL FOUNDRY CO. COMMON STOCK, PAR VALUE $1

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 22nd day of June, A. D. 1940.

Continuance of unlisted trading privileges on the New York Curb Exchange in the Common Stock, No Par Value, of Continental Roll & Steel Foundry Co., having been permitted by action of this Commission on October 1, 1934; and

Said Exchange, pursuant to paragraph (b) of Rule X-12F–2, having applied to this Commission setting forth that there are being effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, pursuant to Section 12 (f) and 23 (a) of the Securities Exchange Act of 1934, as amended, and Rule X-12F–2 (b) promulgated thereunder, that the determination sought by said application is made and the application is hereby granted.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40–2580; Filed, June 24, 1940; 11:16 a. m.]

[File No. 70-90]

IN THE MATTER OF KENTUCKY UTILITIES COMPANY

NOTICE OF AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 24th day of June, A. D. 1940.

An application pursuant to the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on July 12, 1940, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Willis E. Monty or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so des-

[1] 5 F.R. 2205.

ignated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before July 7, 1940.

The matter concerned herewith is in regard to the proposed purchase by applicant, in the open market at the market price (but at not more than 102 and accrued interest), of not to exceed $300,000 principal amount of its 4½% Sinking Fund Mortgage Bonds, due February 1, 1955. Such bonds are to be delivered for cancellation to the Trustee under the indenture securing the same to satisfy the sinking fund provisions contained in such indenture.

Applicant has designated Rule U-12C-1 of the Act as applicable to the proposed transactions.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 40-2582; Filed, June 24, 1940; 11:16 a. m.]